MASTER'S THESIS IN INTERNATIONAL LAW AND HUMAN RIGHTS

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The Amazon is on fire – States' responsibility to protect the Amazon environment from a human rights perspective

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Abstract for Master´s Thesis

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Abstract:

The purpose of the thesis has been to discuss whether foreign states have a right to intervene in a situation in which a particular state is destroying environment by committing serious environmental crimes or other serious environmental degradation. Queimada, a traditional burning season in Brazil, is used as the main example. This topic became extremely current in international level in 2019. However, natural resources are belonging to under national legislation, but burning the "lungs of the world" is severely harming the rights of other people in both neighboring states and also in all other parts of the world, because "the lungs" are so important for the global ecosystem. For this reason, it can be questioned whether there would be a reason to say that burning the Amazon is violating the human rights of the whole of humankind.

Researching the topic showed that international law has not addressed the issue, leaving this matter to individual countries. In the case of the Amazon rainforest, despite the fact that the rainforest is significant for the entire globe, states existing in the area of it are responsible for its natural resources. As a conclusion of researching the topic, there is a reason to start calling the Amazon rainforests one of the global commons. Protecting the Amazon rainforests can already be counted as erga omnes.

The concept of global environmental protection is still quite weak, because the importance of environmental protection has been understood only during a few decades. This means that concepts of international environmental protection have not had a chance to properly develop yet. It seems that there are still many uncertainties about human rights and other legal questions, for instance, the role of an ecological intervention.

Despite the possible uncertainties, other states and international community already have many possibilities to intervene into a situation in which Brazil or another country destroys the environment. The research showed that there are still many important things to be done. Ecological interventions are not legally defined in international law. Being able to prosecute ecocides would mean that the international community would make it more possible to stop countries from destroying environment by being able to properly prosecute them.

As a conclusion, there are already now multiple possibilities to intervene in a situation in which a particular country is destroying environment. This also means that, whether Brazilians are continuing on the tradition of queimada in future, other countries and the international community have a possibility to intervene into the situation. However, for the reason of a vague status of an environment in international law, they are only having a right to intervene into a situation and break against the state sovereignty of Brazil by doing that. They will not have a proper legal duty to do that as long as environment is not an official international human right, environment is not given its own rights or ecocide is not recognized as an international crime.

Key words:
Amazon, international environmental law, state responsibility

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Bibliography

1. Introduction

1.1 The background and the reason to choose the topic

Brazil plays a huge role in the global fight against climate change, especially because of its vast forests. However, the amount of deforestation now occurring is in great dispute.[1] The burning rainforests in Brazil were one of the most important and dramatic pieces of news in 2019. Even if the fires were in the media widely in 2019, the phenomenon is not new. Brazilians have burned Amazon already earlier during the annual traditional burning season of *queimada*, but 2019 was extraordinary. The number of fires in the Amazon rainforest increased by more than 80 percent in 2019, and so the nature of the phenomenon has completely changed.[2]

The main intention of this thesis is to discuss if other states have a legal possibility to intervene in a situation in which one state is destroying the environment. I will research this topic by having the human rights aspect as my main interest, because destroying environment makes it really difficult to take care of many different human rights at the same time. Additionally, destroying the environment violates many different human rights, so this question is an extremely important one to be researched. As my main example, I will research whether Brazilians have a possibility to burn rainforests without other countries being able to prevent it. An article published in *The Guardian* in 2019[3] aroused my interest in this topic and made me choose it for this thesis. The question is extremely current, important and worth researching, because the burning season in Brazil is annual and it is not the only way people are destroying the environment.

While the media are mainly writing about humanitarian interventions that are made in times of war, there are many non-governmental actors such as Friends of the Earth that are campaigning for saving the planet and its rainforests. There is an interesting contradiction between these two facts, because there is reason to assume that also states should have a possibility to intervene in a situation in which the unique Amazon environment is threatened.

[1] Wedy 2017, p. 1.
[2] https://yle.fi/uutiset/3-10930848, 1.1.2020.
[3] https://www.theguardian.com/commentisfree/2019/aug/31/brazil-amazon-fires-justify-environmental-interventionism, 1.1.2020.

1.2 Research questions and limitations

The main research question of this thesis is whether other states and international community have any possibility to intervene in a situation in which a state is systematically destroying the environment. This question will be divided into different subcategories, such as: Have other countries a right to intervene without the country wanting it? Burning rainforests in the Brazilian part of the Amazon will be used as the main example, but also some other important cases will be referred to in the thesis in order to support the discussion and gain a better understanding of the topic. The most important example in this thesis is *queimada*, the traditional burning season in Brazil. During the season, farmers are burning rainforests in the Amazon in order to obtain more land to farm. Besides the situation in Brazil, also other cases are used to support discussing the topic and getting a better picture of it, but these cases do not have as important role as the case of Brazil has in this thesis.

The point of view in this research is highly linked to human rights and state sovereignty – first, it needs to be discussed what is the role of the state sovereignty in these questions and whether environment can be considered as a human right and how the environment and rights of the indigenous peoples are linked to each other. These aspects are important, because next it needs to be discussed if a state like Brazil has a responsibility to protect its environment under international law. Taking care of such a responsibility would namely harm the state sovereignty of Brazil, because burning the rainforests basically means burning natural resources of Brazil and, in the eyes of law, natural resources are belonging under national legislation.

In 2019, it was widely told in the global news how Brazil was not protecting its natural resources in the area of the Amazon rainforests. Instead, it seems that Brazilians have burned much more land than a year before. For this reason, it is necessary to ask whether other countries and the international community have a legal possibility to intervene in a situation like this. This means that Brazilians have set both indigenous peoples' and the whole humankind's human rights in danger. Such issues make it necessary to think that if there is a need for an ecological intervention. In this thesis, different forms of an intervention are briefly discussed in Chapter 5 in order to understand how they can be used in order to stop an environmental catastrophe from happening or continuing.

These forms of an intervention are then compared to the situation in Brazil – for instance, at the end of June in 2019, the European Union and four founding members of the Southern Common Market (Mercosur) reached out an "agreement in principle" on a free trade agreement as part of a wider association agreement.[4] Mercosur is a good example about the fact that there are many ways to make an intervention and different countries can use different ways of intervening. The case of Mercosur can be counted as an economic intervention, and so it is also showing how economic measures can be taken in order to push one country to take care of environment.

In addition, in this thesis it will be discussed if a massive environmental degradation like burning the rainforests in Amazon can be prosecuted as a crime against humanity in the International Criminal Court (the ICC). Even if it cannot precisely be described as one special form of an intervention, it is necessary to understand how international bodies are trying to solve the situation while they are prosecuting the possible perpetrators and intervening the internal issues of the particular country that way.

The Amazon rainforest is located in the area of many different countries. However, I consider it important to mention that the research is limited to consider Brazil. For instance, the situation in Bolivia in 2019 will not be research while the question of the Amazon rainforests is discussed at the end of each Chapter. In 2019, at least 10 000 square kilometres of forests were burned in Bolivia. *Evo Morales*, the President of Bolivia, had encouraged people to burn rainforests in order to make the production of biofuels possible in Bolivia. In the autumn of 2019, Bolivians sent police, firemen, military troops and airplane to extinguish the fires.[5] Other countries and cases are only mentioned in order to support analysing the situation Brazil.

1.3 Method

The method of my thesis is the Legal-Dogmatic Research. It can be considered as the most traditional field of legal research and it is researching law that is currently existing.[6] The Legal-Dogmatic Research is concentrating on the meanings of the legal texts.

[4] https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640138/EPRS_BRI(2019)640138_EN.pdf, 1.1.2020
[5] https://yle.fi/uutiset/3-10937631, 1.1.2020.
[6] Hirvonen 2011, p. 21.

Because of the complexity of legal texts, it is not correct to say that the Legal-Dogmatic Research would help to find out what is the truth in current law. It is better to say that the intention of the Legal-Dogmatic Research is to clarify the basic idea of the legal norm.[7]

The Legal-Dogmatic Research has multiple different analysing methods. If the legal text is analysed based on wording, the analyse relies on vernacular meanings, meanwhile on systematic analyse other legal norms, common doctrines of the particular area of law, theories of the Legal-Dogmatic Research, systematics and logic of the legal order and the legal order as a whole are taken into consideration. The intention of the lawmaker can also be analysed based on, for instance, legal history or legal comparison. The vernacular meaning of an expression in legal text can also be broadened or reduced. Legal texts can be analysed by using analogy or teleology. In the Legal-Dogmatic Research, it is possible to analyse legal texts by concentrating on values of texts or by analysing the texts objectively.[8] The scientific goal of this is to produce legal texts analysing, systematizing and considering the contents of law by using grounds of decision that are belonging to the Sources of Law Doctrine and the ways of judgment that are approved by the Legal Argumentation Theory.[9]

For my thesis, I chose the Legal-Dogmatic Research as my research method, because it is serving my research purposes in a very suitable way. In order to understand whether states have legal possibilities to intervene into a state that is destroying environment, it is important to analyse legislation. This question has various legal aspects that are of such character that they are researched in the most suitable way by using the Legal-Dogmatic Research as the research method. In a case of environmental and quite sensitive topic like the case of the Amazon rainforest, at least there is a reason to understand that the current President of Brazil and his authorities are not clearly sharing the same environmental values like the rest of the world, meanwhile the analyse based on wording is obviously the most necessary way of analysing the legislation that has at least something to do with the topic, because by using this as the way of analysing it will be guaranteed that as many legal aspects as possible will be analysed in this Master's thesis.

[7] Hirvonen 2011, p. 36.
[8] Hirvonen 2011, p. 39 – 40.
[9] Hakomäki 2006, p. 6.

Besides the main method I am using in this thesis, the topic of my thesis has some strong connections to legal sociology, because the environmental crisis Brazil is annually suffering cannot only be considered as a legal question. It is strongly linked to Brazil's current political and societal situation. The situation would not be the same also in those circumstances in which the environment is not destroyed by people, but by an environmental catastrophe. However, in all cases, the connection between environmental crimes and other environmental catastrophes, law and societal issues can be seen as an interesting research question. In order to understand this connection, it is reasonable to use legal sociology as "the assisting method" of my thesis. As a research method, legal sociology is discussing the relationship between different legal practices, institutions, legal doctrines and the societal context that is related to them. In historical sociology, it is said that there is no phenomenon that is single and isolated.[10] Burning rainforests as a phenomenon have many different societal aspects and most of them need to be discussed in order to properly answer the question if other countries and the international community have a legal possibility to intervene the situation in Brazil. The situation is the same in many other situations, because there is no legal case without a background or at least some links to the current situation in a society.

1.4 The structure of this thesis

After the introductory Chapter, in the Chapter 2 of this thesis will be discussed the background of burning rainforests in the Brazilian part of the Amazon. Shedding light on the phenomenon itself before discussing it from the legal point of view helps to understand the legal aspects related to it and if there are any questions that need to be taken into consideration. In this Chapter, the question if the situation in the Amazon can be considered as a human rights issue will also be taken into consideration. The actual legal part of this thesis is divided into two different Chapters.

In Chapter 3, I will research environment as a human right in order to properly discuss the state sovereignty and responsibility to protect in Chapter 4. The intention of this Chapter is to find out if states have a responsibility to protect both people and environment. In Chapter 5, the right to intervene into the situation during the burning season in Brazil is going to be researched. This means analysing different ways to legally

[10] Raikas 2018, p. 16.

intervene the situation in a foreign country. The most important question in this Chapter will be the status of Mercosur, which is a remarkably important trade agreement between the European Union and four countries in the South America. The last Chapter 5 will contain the conclusions of this thesis.

1.5 Terminological clarification

Before starting my research, it is important to concentrate on using the terminology. Intervention can be understood from both a legal and an everyday point of view, and, thus, before starting the actual research it is worth mentioning that I am only partly relying on the traditional definition of intervention in international law.

Traditionally, intervention has referred to making an illegal military intervention into another country by using force and to intervene its policy that way. Non-military interventions are often considered to be somewhat secondary ones to traditional military interventions, but it needs to be understood that in environmental cases, it is much more possible that non-military interventions are undertaken than the military ones. For this reason, the term intervention needs to be understood in a little bit more general sense than what is the traditional definition of it. Furthermore, I also discuss the role of international courts in my thesis. Whether an environmental crime is prosecuted and researched by an international court instead of a national one for one reason or another, the international court is, as they say, stepping on the toes of the national court. This cannot precisely be considered as a form of an intervention. However, it is very close to it, because international bodies are trying to solve an issue which is mostly legislated by national law.

2. The case of burning rainforests in Brazil as a legal and political question

2.1 The burning lungs of the world

The Amazon rainforest is the biggest rainforest in the world and covers about 40 percent of South America. It encompasses the largest water reserve in the world, boasting unrivalled biodiversity.[11] It has the biggest influence on the climate both globally and regionally.[12] Thus, the Amazon is often said to be "the lungs of the world". If these lungs are not protected, they will be lost in future through burning or other forms of deforestation. This is a serious threat for the world - it is obvious that the loss of the world's forests could have an impact on more broaden ecosystems. A clear example is the situation of tropical forests in general and particularly the Amazon rainforest.[13]

However, it should be noted that the Amazon rainforests are not yet considered as one of the so-called global commons. According to the United Nations Environmental Programme (UNEP), there exist four global commons, namely the High Seas, the Atmosphere, Antarctica and Outer Space.[14] Unlike the Amazon, these currently existing global commons are not located in any particular country's territory. By taking the global commons into consideration, regulating them by international legislation is much easier than in the case of the Amazon rainforests. However, there is a reason to say that the importance of "the lungs of the world" is so huge that it should also be counted as a global common despite being located in the area of South American countries.

In this thesis, the burning Amazon in 2019 will be used as the main example to clarify in what cases other countries could make an ecological intervention. It is also necessary to discuss the nature of possibilities for this intervention. In order to understand the situation better, in this chapter I will briefly describe the situation in the Amazon from a biological, legal and political point of view. Understanding the phenomenon is needed in order to discuss whether there are legal possibilities to intervene. It is also

[11] Picq 2016, p. 3.
[12] Kouki 2017, p. 4.
[13] Pūraitė 2013, p. 228 – 229.
[14] Jorge & Usebiu 2019, p. 61.

necessary to discuss the relationship between the sovereignty of Brazil and other countries' possibility to make an ecological intervention.

2.2 The burning season

In Brazil, wildfires often occur in the dry season, but they are also deliberately started in efforts to illegally deforest land for cattle ranching.[15] Rainforests in Brazil are burned every year during a season named "*queimada*". The former environment minister of Brazil *Marina Silva* has argued that deforestation and fires have always been a problem in the Amazon area. As a minister in the mid-2000s, Silva managed to crack down on illegal activity in the Amazon by contributing to an 83% fall in deforestation from 2004 to 2012.[16]

However, this environmentally friendly development did not last long. Around 2014, the deforestation began to rise as ranchers and loggers searched for new land to exploit. The Amazon was the obvious place to go, because it was relied on for centuries for rubber trees, minerals and fertile land.[17] In the Brazilian part of the Amazon, 63 percent of deforested land is occupied by cattle grazing. Illegal logging has advanced to worrying levels. Since the 1980s, and even more today, the expansion of the soybean frontier and the land used for cattle grazing from South and Central Brazil has continued to shift pastures north into the Amazon.[18]

When the lungs of the world were on fire in 2019, it was widely discussed in the global politics what can be done to prevent this from happening again and continuing during the next dry season. Brazilian farmers are typically burning forests during summer time and ending it when the rains begin in October or November.[19] The tradition is annual, and so ending one season does not mean ending the whole tradition. Thus, the amount of burned rainforest varies each year.

[15] https://www.bbc.com/news/world-latin-america-49433437, 4.1.2020.
[16] https://www.nytimes.com/2019/12/05/world/americas/amazon-fires-bolsonaro-photos.html, 1.1.2020.
[17] https://www.nytimes.com/2019/12/05/world/americas/amazon-fires-bolsonaro-photos.html, 1.1.2020.
[18] Ghiotto & Echaide 2019, p. 68.
[19] https://yle.fi/uutiset/3-10930848, 1.1.2020.

In 2019, the amount was huge, because President *Jair Bolsonaro* encouraged the Brazilian farmers to burn forests in order to obtain more land to farm. According to Bolsonaro, protecting forests makes economic development difficult to Brazil.[20] Bolsonaro does not think that burning forests in order to obtain farming land is a problem, especially during the traditional burning season, and farmers are supposed to burn land during it, because exporting meat and other daily products is important for the Brazilian economy. It is obvious that Bolsonaro is not interested in environmental issues or preventing climate change and, instead, wants to give land to farm for those Brazilians who do not already have it.[21] It has been reported that in 2019, more than 3,700 square miles of the Amazon burned down.[22] However, it needs to be remembered and understood that even if the number of fires in 2019 was quite exceptional, it was not the only year that Brazilians have contributed to deforestation in the Amazon area.[23]

2.3 The situation in international politics

The Amazon has sometimes been described as the land without history, wild and remote. In this depiction of the Amazon area, there are pristine rainforests inhabited by isolated tribes in need of preservation from global forces. Such an attitude has led to a situation in which the Amazon has not been seen as a topic that has anything to do with politics.[24] However, the role of the Amazon area in international politics has changed significantly through history because of the deforestation and other environmental degradation. The topic is significantly related to human rights, and so the political aspects need to be taken into consideration at least to some extent also in a Master's thesis that is mostly considering legal questions. International human rights documents do not directly speak about the right to a healthy environment, and so the political aspects are often solving what is happening.[25]

The deforestation of the Amazon rainforests was a concern already in 1994, when it was written that the deforestation has lately become an issue of broad political concern.

[20] https://yle.fi/uutiset/3-10937631, 1.1.2020.
[21] https://yle.fi/uutiset/3-10930848, 1.1.2020.
[22] https://www.nytimes.com/2019/12/05/world/americas/amazon-fires-bolsonaro-photos.html, 28.2.2020.
[23] https://www.theguardian.com/world/2018/mar/01/brazil-amazon-protection-laws-invite-deforestation-ngo, 29.2.2020.
[24] Picq 2016, p. 1 – 2.
[25] Abiri 2001, p. 4.

Back then, it was questioned whether the globally increased environmental awareness will serve to enhance regional land management.[26] Since then, it has become even more of a hot topic. Especially in 2019, the burning rainforests in the Brazilian part of the Amazon were widely discussed and criticized in international politics. The international community cannot let its members destroy the environment as much as they have done before. The reason for this development is obvious: the importance of rainforests and their ecosystem is enormous for the entire globe's ecosystem. However, the Amazon has represented one of the most powerful symbols of activism across borders already since the 1970s, when environmental issues became a theme of global concern and politics. Since then, there have been many social movements both nationally and internationally doing their best to affect the restoration of the area of the Amazon.[27]

Because the Amazon rainforest plays an extremely important role in an attempt to prevent climate change, the climate change needs to be taken into consideration also in political discussions considering the fires of the Amazon rainforest. The attempt to prevent climate change can be seen, for instance, in the goals of an organization called Climate Alliance, which is a good example of international political cooperation that attempts to, *inter alia*, save the Amazon. This organization saw the daylight in 1990 and over a thousand European cities have joined as its members. Climate Alliance is eagerly cooperating with the indigenous peoples in the area of the Amazon rainforest by having COICA (Coordinator of the Indigenous Organizations of the Amazon Basin) as its main partner. On an international level, the main partner of the Climate Alliance is I.A.I.P. (International Alliance of the Indigenous-Tribal Peoples of the Tropical Forests), which represents indigenous peoples and tribes living in tropical forests.[28] Political movements like Climate Alliance have a very important role in political discussions and that way they also have an impact in legislation considering the protection of the Amazon rainforest.

The political pressure had a very significant during the fires in the area of the Amazon rainforests in 2019. It was assumed that the international pressure may be the only way to stop the Brazilian government from taking a "suicide" path in the Amazon area, as

[26] Eden 1994, p- 55.
[27] Zhouri 2004, p. 69 – 71.
[28] Kerkkänen 2010, p. 39.

one of the most respected Brazilian scientists described the situation while the world's biggest rainforests was ravaged by thousands of deliberate fires.[29] The political pressure plays a very important role in an attempt to stop the tradition of *queimada* in Brazil. Using – or burning – natural resources is legislated as part of a national legislation, but there is a possibility to intervene in a situation where the right of political self-determination is used in the wrong way. International interventions are necessary, because governments facing popular demands for the right of political self-determination often resort to repression and military means to suppress such claims. Such interventions have also been driven by contemporary interest in supporting collective rights through international organisations that monitor and identify violations of various political rights.[30]

The political effects of the fires became soon very clear. For instance, they affected the *Mercosur* agreement (see subchapter 4.4.2). At least France, Ireland, Luxembourg and Austria have not supported the agreement, because Brazilian farmers have burned rainforests in the Amazon. Lawmakers in the Austrian parliament's EU subcommittee voted to reject the draft free agreement, thus obliging their government to veto the pact at the EU level. These developments have increased the uncertainty about of this agreement.[31] The agreement is very important for the South American economic growth, so there is a reason to say that these negative impacts can be considered as an economic intervention (see subchapter 4.3.2).

Additionally, it needs to be taken into consideration that the fires in the Amazon rainforest are an important question for an international food policy. Because the rainforests are burned in order to obtain more land to farm, it is necessary to understand that other countries are giving Brazil a reason to continue with the tradition of *queimada* also in future by buying Brazilian food products or letting these products to be brought into a country. This means that other countries need to think of making an economic intervention in the situation in Brazil by boycotting the Brazilian products and not letting them be brought in a country.

[29] https://www.theguardian.com/environment/2019/aug/23/amazon-fires-global-leaders-urged-divert-brazil-suicide-path, 29.2.2020.
[30] Alshammari 2014, p. 3.
[31] Ghiotto & Enchaide 2019, p. 7.

2.4 The fires as a legal question

International conflicts related to a phenomenon of disrespect for the environment have begun recently. Among the forms to solve international environmental conflicts, there is a concept of ecological intervention, which affects the state sovereignty.[32] The situation in the Amazon area in 2019 can be defined as an international environmental conflict, because the role of the Amazon is so significant for the entire global ecosystem.

It is obvious that burning the rainforests in the Amazon area violates many international obligations of Brazil. It should be noted that most of the documents adopted in the field of international forest protection are non-binding ones.[33] However, there are also legally binding documents in international law. The Paris Agreement is a good example of this. Brazil is committed to work against illegal deforestation and to deliver 12 million hectares of reforestation in the Amazon forest, which plays a crucial role in regulating the earth's climate.[34] The fires in the area of the Amazon in 2019 were creating also many other problems for the Paris Agreement. The treaty aims to limit global temperature to well below +2 degrees above pre-industrial times to avoid dangerous impacts. Tree cover loss from tropical forests is estimated to account for nearly 10 percent of global carbon emissions. In addition, trees are also said to provide more than 20 percent of climate solutions.[35]

Besides international law, there are also significant aspects in national legislation and court cases in Brazil that are related to the situation in the Amazon. It is written in Article 225 of the Brazilian Constitution that the Brazilian part of the Amazon Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are part of the national patrimony, and they shall be utilized under conditions assuring preservation of the environment, including use of natural resources.

In addition, Brazil's supreme court has upheld major changes to laws that protect the Amazon and other biomes, reductions penalties for past illegal deforestation in a blow

[32] At this point, it needs to be understood that jurisdiction considering ecological issues cannot be done without being based on law, because the ecological intervention is strongly affecting to the intervened country's state sovereignty, so these two forms are linked to each other in a very significant way. See: Simioni & Lorenzet 2008, p. 155.
[33] Pūraitė 2013, p. 229.
[34] Ghiotto & Enchaide 2019, p. 64.
[35] https://www.bbc.com/news/science-environment-49484530, 29.2.2020.

to environmentalists trying to protect the world's largest rainforest.[36] Because the new Brazilian attitude towards environmental protection clearly is not supportive, it has already been written that, in order to combat the subversion of deforestation-control agreements and legislation, there is an urgent need to support, inter alia, implementation of stricter laws to prevent illegal clearing of new areas in the Amazon and Cerrado.[37] At the moment, Brazil's enforcement and legal systems provide multiple opportunities for infractions of environmental laws to go undetected or unpunished. Authorities only catch a small fraction of illegal actions, and if caught, the probability of the perpetrator actually paying the resulting fine is also very low.[38] In a legal environment in which environmental criminals will not be punished, there is quite a small possibility that Brazilians could stop annually burning rainforests without foreign help.

Besides the Brazilian Constitution, there is also other national legislation considering the Amazon in Brazil. From the late 1990s through 2004, deforestation of the Amazon became far more sensitive to global influences as commodity market conditions and technological advances favoured the first large-scale expansion of soy and other mechanized crops into the region. At least back then, the Brazilian Forest Code was the most important legal restriction on forest clearing on private lands. It establishes a minimum portion of each property that must be managed as a forest reserve. In the Amazon region, this reserve was increased from 50 to 80 percent in 1996.[39] However, such legislation that is helping to protect the Amazon has been renewed during the era of the current President of Brazil.

The Amazon is located in the area of multiple South American countries (Brazil, Bolivia, Columbia, Venezuela, Ecuador and Peru), so it is important to understand that, despite the fact that only the situation in Brazil is properly discussed in this thesis, the legislation of many countries is affecting the situation in the area of the Amazon rainforest. These countries are protecting the rainforest in different ways.

> Besides setting laws to protect the rainforest, it is also possible to discuss the situation in the Amazon in courts. For this reason, one court case needs to be mentioned from outside the Brazilian territory. In 2018, the Supreme Court of Colombia (Corte Suprema de Justicia, Sala de Casación Civil) issued a decision recognizing the Amazon River

[36] https://www.theguardian.com/world/2018/mar/01/brazil-amazon-protection-laws-invite-deforestation-ngo, 29.2.2020.
[37] Carvalho and others 2019, p. 125 – 126.
[38] Carvalho and others 2019, p. 127.
[39] Nepstad, Stickler, McGrath & Azevedo 2014, p. 1118.

ecosystem as a subject of rights and beneficiary of protection. This decision was path-breaking for environmental law, human rights, and the right of nature. The Court declared that, "for the sake of protecting this vital ecosystem for the future of the planet", it would "recognize the Colombian Amazon as an entity, subject of rights, and beneficiary of the protection, conservation, maintenance and restoration" that national and local governments are obligated to provide under the Colombian Constitution.[40] The case began when 25 Colombian children and young people sued their government for their right to a safe environment. The lawsuit was led by a human rights organization Dejusticia. This case is the first time a direct connection has been made between deforestation and climate change.[41] However, there is a possibility to create such cases also in other countries in the area of the Amazon and also in other countries to give better rights to the environment.

Due to varying ways of protection, there has been different suggestions about the future of forest protection in the area of the Amazon rainforest. Even if most national frameworks internalize the rules of international law, a body of law of its own is said to be required to properly safeguard nature, and, specifically, the Amazon rainforest.[42] This would mean a complete change for the protection of the Amazon rainforest – a body like this would guarantee that Brazil and other South American states would not have a possibility to destroy the unique environment and justify it by saying that the natural resources of the rainforest belong to them.

[40] https://www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem, 29.2.2020.
[41] https://www.pri.org/stories/2018-05-06/colombian-high-court-grants-personhood-amazon-rainforest-case-against-country-s, 29.2.2020.
[42] Daly & May (ed.) 2018, p. 60.

3. Environment and human rights in international law – do we have a human right to a healthy environment?

3.1 Environment as a human right in international law

3.1.1 Three generations of human rights in international law

Environmental rights are linked to both international environmental law and the international human rights system. Even if international human rights agreements still to a rather large extent lack articles about environmental human rights, many international environmental agreements already mention environmental rights. The first one of these agreements is the Aarhus Convention (1998), which is a legally binding agreement at the international level and which includes a human right to a healthy environment that also belongs to future generations. Understanding the concept of an environment as a human right is important in my thesis, because the main topic of it is whether countries have a legal right to an ecological intervention if one country is destroying the environment. This makes other countries to weigh on its actions both as possible environmental crimes or as other negative actions towards environment, but also as actions that violate human rights.

There are many different points of view considering the relationship between environment and human rights. This relationship has, obviously, been the most important question. The second one has been that whether the international community has a need to recognize environment as a human right. The third point of view has been to link the right to a decent environment to the concept of development: according to this point of view, economic, environmental and social justice are linked to each other and they need to be discussed as a whole.[43] In this thesis, environment as a human right is discussed at this point, because, in today's world, states are strongly bound by international human rights obligations and so it is necessary to understand to what extent states such as Brazil are bound to protect the environment as a human right.

The history of international environmental law is not long. As a field of law, environmental law started to develop in the 1960's, when people became aware of human rights issues.[44] These human rights are nowadays divided into three generations. Thus,

[43] Koivurova & Pirjatanniemi 2014, p. 534.
[44] Kumpula 2004, p. 41.

there is a reason to count environmental human rights to represent the third generation of rights. These generations and the classification system being based on them were created by *Karel Vašák*. The first generation regards negative rights and corresponds to civil and political liberties. The second generation presumes a positive action of the state and includes social, economic, and cultural rights. These first two generations of rights have their corresponding covenants signed in 1966, namely the ICCPR for the first and ICESCR for the second.[45] In my thesis, these generations are used to show how the environmental human rights have much shorter history than other human rights. For this and many other reasons, my main topic, the environmental intervention, has had less time to develop as a form of an intervention.

The first and the second generation of human rights have much to do with environmental protection. Civil and political rights are fundamental to guaranteeing a political order supportive of sustainable development, and economic, social and cultural rights often have a direct bearing on the human environmental condition – for instance, the ICESCR provides, amongst others, the right to health which recognizes the need for an environmental improvement and a right to self-determination including the right of all peoples to manage their own natural resources.[46] The first and the second generation of human rights are very important for environmental rights. For instance, there is no actual environmental right in the European Constitution of Human Rights, and so the only option is to use the existing rights in order to fulfil peoples' environmental rights. However, even if the indirect protection of environmental rights is taken care of the European Convention of Human Rights, the European Minister Committee has been told to include the direct protection of environmental rights into the Convention, but the Committee has not done this.[47]

The third generation of human rights, which environmental rights actually belong to, is the most recent and still quite vague to its content.[48] This generation consists of the so-called collective rights. These rights include a right to self-determination, economic and social development, healthy environment, natural resources, and participation in

[45] Domaradzki, Khvostova & Pupovac 2019, p. 424.
[46] Abovale etc. 2001, p. 2.
[47] Rävås 2017, p. 3.
[48] It needs to be noted that environmental rights are not truly belonging to any of these generations of human rights. They can be viewed from at least three perspectives, straddling all the various categories or generations of human rights. See: Boyle 2006, p. 471.

cultural heritage. Besides being collective, these above-mentioned rights are positive and demanding responsibility, which lies beyond the nation-state.[49] During the globalization era, the global environment and environment rights are modern and current topics besides, for instance, the questions of labour and development rights, migration and citizens' rights, or cultural rights, and so they need to be discussed more than ever during our generation.[50]

It is still quite rare that courts discuss the duty to protect the environment or about the environmental human rights. However, there are case examples around the world that the third generation of human rights has found its way into courts:

> The climate case *Urgenda* (2019) from the Dutch Supreme Court in the Netherlands is a unique solution. The Court upheld the previous decision in the Case, finding that the Dutch government has obligations to urgently and significantly reduce emissions in line with its human rights obligations. For the first time in the world, in this case, citizens established that their government has a legal duty to prevent dangerous climate change and protect their human rights that way.[51]

> Managing or disposing freely of one's own natural resources is internationally discussed in some legal cases and is an important form of an environmental human right. The most remarkable one of them is the *Ogoniland* case from Nigeria, which went further than any other in the substantive environmental obligations it places on states. It is unique in applying for the first time the right of peoples to dispose freely of their own natural resources. When combined with the evidence of severe harm to the lives, health, property and well-being of the local population, the decision can be seen as a challenge to the sustainability of oil extraction in Ogoniland. In somewhat similar circumstances, the Inter-American Commission and Court of Human Rights (IACHR) have interpreted the rights to life, health and property protection from environmental destruction and unsustainable development and they go some way towards achieving the same outcome as the case of Ogoniland. In the *Maya Indigenous Community of Toledo Case*, the IACHR accepted that logging concessions threatened long-term and irreversible damage to the natural environment on which the petitioners' system of subsistence agriculture depended.[52]

It is important to understand that cases like this are still quite rare. Especially the cases considering the environmental human rights are not based on strong human rights. Even if human rights belonging to the third generation are still a little bit vaguer than the earlier generations, it does not mean that they would not be regulated at all at the international level. This is important to notice, because it means that there are some

[49] Domaradzki, Khvostova & Pupovac 2019, p. 425.
[50] Domaradzki, Khvostova & Punovac 2019, p. 428.
[51] https://www.urgenda.nl/en/themas/climate-case/, 3.3.2020.
[52] Boyle 2006, p. 475 – 476.

sources that are at least trying to make states to go by them. Whereas the rights of the first two generations have found their reflection in numerous conventional instruments which are truly binding under international law, it is by no means certain that rights of the third generation do exist as legal propositions and not only as political manifestations. In addition, they have been affirmed in resolutions of the General Assembly and of state conferences, but have not been included in international treaties.[53]

However, in today's international and environmentally friendly political environment, this does not mean that a country could easily be let by other countries to not respect the right to a healthy environment. The environment is often protected based on other international agreements or principles, for instance in 2018, the United Nations published *16 Framework Principles on Human Rights and the Environment*. According to the Framework principle 1, states should ensure as safe, clean, healthy and sustainable in order to respect, protect and fulfil human rights. In addition, according to the Framework principle 2, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.[54] This shows how there is a clear connection between environment and human rights – even if the right to a healthy environment is not officially recognized as a human right in international law yet, human rights cannot be respected in an environment in which people cannot live and vice versa. Human rights need to be respected, protected and fulfilled, because people are unable to take care of the environment in a situation in which they need to fight for staying alive.

3.1.2 Is there a definition for a healthy environment in international human rights law?

The responsibility to protect has traditionally meant the responsibility to protect core human rights, as will be further explained in Chapter 4. The right to a healthy environment is today seen as a human right; but, however, it is not that obvious whether countries are obliged to protect the environment for the sake of the environment or so that people will be guaranteed a good and healthy environment as a human right. According to the Stockholm Declaration on the Human Environment of 1972, the states have

[53] Tomuschat 2008, p. 70.
[54] https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx, 5.3.2020.

a sovereign right to exploit their own resources according to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not damage to the environment of other states or of areas beyond the limits of national jurisdiction.

Obviously, this requirement also means that states are not allowed to damage other states' environment that way that it cannot be considered acceptable anymore. The Declaration is not legally binding, but it has been discussed whether the principle of not harming the environment of other states has a customary law status or not.[55] At least some scholars are of the opinion that there is no doubt that this obligation is part of general international law. However, the International Court of Justice expressly endorsed the obligation as a rule of international customary law in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*[56] and again in the *Case concerning Pulp Mills on the River Uruguay*.[57]

Countries have certain human rights obligations and, because many environmental questions are today often seen at least as unofficial human rights, countries have obligations to protect the environment and keep it so clean that people can live. Thus, in this chapter I will, to some extent, research international human rights obligations and how the right to a good and healthy environment can be seen in it. For the topic of this thesis, discussing the role of the environment in human rights is necessary, because the responsibility to protect has traditionally considered only severe human rights violations.

Even if the topic has been frequently discussed during recent years, the right to a healthy environment has not officially been recognized by the United Nations or dozens of countries. The United Nations has, however, worked intensely to make the position of environmental rights stronger. For instance, the UN Environment has launched an environmental rights initiative to scale up the training of judges, prosecutors and police in environmental law and to work with companies to include human rights in investment planning. Environmental protection and human rights were long

[55] Nijs 2017, p. 38.
[56] https://www.icj-cij.org/en/case/95, 6.4.2020
[57] Handl 2012, p. 4. See the case in: https://www.icj-cij.org/en/case/135/judgments, 6.4.2020.

considered separate issues, but they have increasingly intermeshed, particularly during the 21st century.[58]

> Even if the United Nations itself has not recognized a healthy environment as a human right, more than 100 countries already recognize the link between environment and human rights and have legislation about the topic.[59] This means that right to a healthy environment is already recognized as a fundamental right in many countries. For instance, the Constitution of India states in its Article 21 that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Indian Supreme Court announced in *Subhash Kumar v. State of Bihar* (1991) that the "right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life". The Court recognized the right to a wholesome environment as part of the fundamental right to life.[60]
>
> This case is a great example how people have started to understand the role of environment for human life and that environment needs to be protected in order to guarantee people a possibility to stay alive, meanwhile in Southern America Ecuador was a forerunner in this topic. In 2008, the Ecuadorian Constitution became the first in the world to recognise rights for nature and "integral respect for its existence and for the maintenance and regeneration of its life cycles, structures, functions and evolutionary processes". It granted strong rights to the state to control and nationalise resource industries and banned resource extraction in protected areas altogether.[61]

Above has been discussed how different legal actors of the world are having different opinions about the role of a human right to healthy environment. However, the term of a healthy environment is not completely clear legally. The Aarhus Convention recognizes the right to a healthy environment without considering a need for establishing an exact formulation or definition for it. The desired quality of the environment is a value subjectively judged and difficult to codify in legal language. The fact that a definition of a right is not fully clear is not inconsistent with the concept of a right *per se*. It needs to be taken into consideration that even where a precise and comprehensive textual definition of a right may be agreed upon, moral choices will still lie be inherent its interpretation, which will vary across cultures and communities.[62]

[58] https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment, 22.2.2020.
[59] https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment, 22.2.2020.
[60] http://www.lexpress.in/environment/right-clean-healthy-environment-fundamental-right-india, 23.2.2020.
[61] Raftopoulos 2018, Chapter "B: Environmental interests".
[62] Giorgetta 2002, p. 187.

3.2 Human rights of indigenous peoples and environmental law

The main research question of this thesis focuses on the situation in Brazil in 2019, the implications on its human rights and whether other states are obliged or have a right to intervene in a situation like this. Additionally, the role of an international court is important, because it coild be the last resort to research if Brazilians have evaded their international human rights obligations by setting up fires in the area of the Amazon rainforests. For this reason, I will briefly represent on the role of environmental questions in an international human rights context considering the rights of the indigenous peoples. I will use the Inter-American Court of Human Rights as an example.[63] In addition, discussing the situation in only one regional human rights court is reasonable because other courts can draw inspiration, refer to or adopt the jurisprudence of other international courts. For instance, the jurisprudence created by the Inter-American Court of Human Rights can be applied in the European Court of Human Rights or vice versa.[64]

In the Inter-American Court of Human Rights, many of the cases related to environmental human rights have involved claims based on the right of indigenous peoples to property on their traditional lands.[65] In this thesis, the traditional definition of indigenous peoples is used when the rights of the indigenous peoples are taken into consideration. Traditionally, indigenous peoples are defined as groups of people that have resided in the area for a long time before the current people moved to this area. Rights that belong to the indigenous peoples are often linked to environmental rights or sustainable development. Environmental degradation, pollution and the climate change are seriously affecting the rights of the indigenous peoples.[66] As such, the rights of the indigenous peoples are discussed in many court cases today. For instance, the Court has discussed the environmental human rights and the role of indigenous peoples in the *Sarayaku v. Ecuador* case.[67]

In the case of *Sarayaku v. Ecuador*, the Court announced that:

[63] Environmental rights of the indigenous peoples in the area of the Amazon rainforests will be discussed in the subchapter 3.3.2.
[64] Heiskanen 2018, p. 102 – 103.
[65] Lewis 2015, p. 90.
[66] Työ- ja elinkeinoministeriö 2015, p. 16
[67] Heiskanen 2018, p. 125.

> "notions of land ownership and possession do not necessarily conform to the classic concept of property but deserve equal protection under Article 21 of the American Convention. Ignoring the specific forms of the right to the use and enjoyment of property based on the culture, practices, customs and beliefs of each people, would tantamount to maintaining that there is only one way to use and dispose of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of people."[68]

From a legal point of view, this kind of case is important when the human rights of indigenous peoples are taken into consideration, because rights of the indigenous peoples are weakened both in Ecuador and in many other countries. Hence, it is necessary that these rights are discussed in courts and taken care of that way at least to some extent. Oil brings money to the Ecuadorian state. Just like many other Latin American countries, Ecuador has a large external debt. Oil exploration seemed to offer a way out of a situation. However, at the same time while as most of oil from Ecuador goes to the United States, the concessions awarded to multinationals such as AGIP, Mobil, Amoco, Elf Aquitaine, Petrobas and Texaco cover approximately 1.2 million hectares of rainforest (out of a total of 13 million) and much of this is on indigenous land.[69] In the area of the Amazon rainforests, the subject of oil is extremely important from both the environmental point of view and as well as of human rights. The oil production can increase the socio-cultural problems between the actors making really difficult the survival of the indigenous peoples and other local habitants and the maintenance of their culture. In most of the cases, the human rights of the residents in affected areas are ignored by the authorities and their lands are appropriated and given as a dealership by governments to petroleum companies.[70] In a case like this, taking care of the human rights of the indigenous peoples is a challenge in such countries.

However, the Court has also commented on other questions related to environmental questions. In 2018, the Court's advisory opinion on the environment and human rights was published. It is the latest and potentially most significant decision in a series of high-profile international judicial rulings that acknowledge legal consequences for environmental harm. The advisory opinion is only available in Spanish and recognizes the right to a healthy environment as being fundamental to the existence of humanity,

[68] IACGMR, *Sarayaku v. Ecuador*, para. 145.
[69] Sachs 2003, p. 11.
[70] Fernandez Suarez 2008, p. 47.

but it also has the potential to unlock real cross-border for the victims of environmental degradation.[71]

This means that there are reasonable possibilities that the Inter-American Court of Human Rights could encounter the tradition of *queimada* in case Brazil is continuing on it in the future. This thesis explains how Brazilians are negatively impacting the human rights of both indigenous peoples and others by burning rainforests, so there is a strong link between the environment and human rights in this study's research question. All in all, the link between the environment and human rights has been very important for the Inter-American Court of Human Rights, and it has helped countries to seek clarification on jurisdictional, procedural and substantive questions at the intersection between environmental and human rights, and obligations.[72]

Besides having an obligation to protect the human right to a healthy environment, countries with indigenous people also have other obligations when it comes to protecting the environment. Throughout the world, there are approximately 370 million indigenous peoples occupying 30 per cent of the earth's surface. It is estimated that there are 5,000 different indigenous cultures in the current world.[73] Indigenous peoples are considered as a vulnerable group in international law, mainly because of their lack of power and their inability to safeguard their rights or to prevent the violation of these rights.[74] Because of their lifestyle, indigenous peoples are desperately in need of being listened to in environmental questions in order to protect their traditional way of living. For instance, according to an assessment test on the relationship between indigenous peoples and their traditional lands developed by the Inter-American Court of Human Rights on the relationship between indigenous peoples and their traditional lands, it was shown that this relationship can be expressed in different ways depending on the indigenous group in question and its specific circumstances, and if there is a viable relationship with the land. The ways in which this relationship is expressed may include traditional use or presence, through spiritual or ceremonial ties, sporadic settlements or cultivation, traditional forms of subsistence such as seasonal or nomadic

[71] Feria-Tinta & Milnes 2016, p. 64.
[72] Abello-Galvis & Arevalo-Ramirez 2019, p. 217.
[73] https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment, 22.2.2020.
[74] Delgado Galárraga 2018, p. 93.

hunting, fishing or gathering, use of natural resources associated with their customs or other elements characteristic of their culture.[75]

However, only a few countries recognize their land rights. In addition, climate change is threatening the very existence of indigenous peoples and large dams and mining activities have caused forced displacement of thousands of indigenous persons and families without adequate compensations in many countries. The promotion of new technologies such as improved seeds and chemical fertilizers has caused environmental degradation and destroyed self-sustaining ecosystems, affecting many indigenous communities to the point of forcing them to resettle elsewhere.[76] It also needs to be taken into consideration that environmental law and international human rights law do not always work together, or further their stated aims. This means that it is often more difficult to take care of indigenous peoples' rights in these questions. For instance, in Ecuador, the effectiveness of environmental law and human rights law is said to be undermined by the failure to recognize and address historical legal structures and policies that are still seeking to dominate indigenous peoples and continue to shape the law.[77]

Indigenous peoples are not sovereign, but they can be autonomous in many issues. Canada is a good example of this and shows how differently countries treat their indigenous peoples: Canadians have given Inuits power to decide on environmental resources and legislation.[78] Giving indigenous people the power to decide does not mean that the country would lose its sovereignty to use its national legislation in the area indigenous people are living in. According to the Canadian Government, Canada is using its sovereignty in the Arctic area like everywhere else in the Canadian territory.[79]

Despite the fact that only a few countries are still recognizing and protecting indigenous peoples' rights in environmental issues, the nations' role has strongly developed in recent decades. After the Stockholm Conference, the World Commission on Environment and Development (WCED) took a human rights point of view in sustainable

[75] Heiskanen 2018, p. 103.
[76] https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment, 22.2.2020.
[77] Kimerling 2016, p. 446.
[78] Hangaslammi 2017, p. 9.
[79] Hangaslammi 2017, p. 41.

development by approving a group of specialists to create a draft about the legal principles of environmental protection and sustainable development. According to the draft, every human has a right to decent nature, which guarantees his or her healthiness and well-being. The draft also respects the indigenous peoples' right to their traditional way of living and traditional knowledge.[80]

3.3 Environment as a human right in Brazil

3.3.1 The role of the environment in the Brazilian legislation

More than 100 constitutions throughout the world guarantee the right to a clean and healthy environment, impose a duty on the state to prevent environmental harm, or mention the protection of the environment or natural resources. Over half of these constitutions explicitly recognize the right to a clean and healthy environment, including nearly all constitutions adopted since 1992. Brazil is one of these countries[81]: according to Article 225 of the Brazilian Constitution, everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations.

During recent decades, the number of legal problems associated with deforestation, flooding, pollution, water and soil contamination has increased in Brazil. This illustrates that environmental law has only been playing a rather symbolic role and has not been achieving its full potential to prevent environmental degradation[82] despite the fact that Brazilian authorities have at least sometimes taken into account the role of the environment and especially that of Brazilian rainforests.

For instance, the Supreme Court of Justice (*Superior Tribunal de Justiça*, also known as STJ) is the highest appeal court in Brazil for federal law. STJ's case law concerning environmental issues is vast and diverse. For the topic of this Master's thesis, the 6th thesis of this issue is the most important one. According to it, the use of fire in agro-pastoral and forestry practices requires prior authorization issued by the state.[83] It can

[80]Heinämäki 2014. p. 530 – 531.
[81] Shelton 2002, p. 22.
[82] Morato Leite & Demaria Venáncio 2017, p. 33.
[83] Morato Leite & Demaria Venáncio 2017, p. 41 – 42,

be said that the 6th thesis has somewhat lost its importance during the era of the current President of Brazil. As the Brazilian authorities are encouraging farmers to burn forests, this above-mentioned authorisation is easily given to those who are in need of it.

3.3.2 Environmental human rights of the Amazon indigenous peoples

Deforestation and fires in the area of the Amazon rainforest are also having severe human rights aspects. In September of 2019, the President of Brazil *Jair Bolsonaro* announced in the General Assembly of the UN that around 14 percent of the Brazilian territory has been demarcated as indigenous lands, some of which contain gold, diamonds, uranium and other valuable resources. According to the President, foreign governments have "manipulated" some Brazilian indigenous leaders to advance their own interests in the Amazon, and, thus, some people are still treating and keeping Brazilian indigenous people as if they are real cavemen. The President is not obviously agreeing with this, because he announced that the indigenous people do not want to be poor, large landholders sitting on rich lands, especially sitting on the world's richest lands.[84]

The truth in Brazil is not that simple. In August of 2019, fires broke out in 131 indigenous reserves. This has raised fears that loggers and land grabbers have targeted these remote and protected areas during the dramatic surge in blazes.[85] In this case, it is important to take into consideration that Brazil has ratified the ILO Convention No. 169. The Convention is concerning Indigenous and Tribal Peoples in Independent Countries. The ILO Committee has emphasized the importance of collective ownership and referred to the right of indigenous peoples to decide their own priorities.[86]

> Besides the annual fires in the area of the Amazon indigenous peoples, Brazilians have misused the lands of the indigenous peoples also in other ways. In a case *Yanomami v. Brazil* (1985), the case was brought by several NGOs on behalf of the Yanomami Indians due to failure to implement legislation relating to the prohibition of the exploitation of the resources of the region.[87] The Inter-American Commission established a link between environmental quality and the right to life in response to a petition brought on behalf of the Yanomami Indians of Brazil. The petition alleged that the government violated the American Declaration of the Rights and Duties of Man by constructing a

[84] https://news.un.org/en/story/2019/09/1047192, 1.1.2020.
[85] https://www.theguardian.com/environment/2019/aug/29/brazil-amazon-wildfires-indigenous-reserves-remote-areas, 1.1.2020.
[86] Ulfstein 2004, p. 17.
[87] Heiskanen 2018, p. 111.

> highway through Yanomami territory and authorizing exploitation of the territory's resources. These actions led to the influx of non-indigenous peoples who brought contagious diseases which remained untreated due to lack of medical care.
>
> The Commission decided that the government had violated the Yanomami rights to life, liberty and personal security guaranteed by Article 1 of the Declaration, as well as the right of residence and movement and the right to the preservation of health and well-being.[88] In addition, the Commission cited the Article 2 (Right to Equality before the Law), Article III (Right to Religious Freedom and Worship), Article XI (Right to the preservation of Health and to Well-being); article XII (Right to Education); Article XVII (Right to Recognition of Juridical personality and of Civil rights); and article XXIII (Right to property).[89]

In the case of Brazilian rainforests, the opinion of the ILO Committee would mean that Amazon indigenous people should have a human right to decide about using their own lands. However, in the ILO, it has been difficult to understand if the lands of the indigenous people are meaning the total environment. In the terminology of ILO, the lands are referred to as "territories". On the one hand, indigenous peoples have claimed rights to the total environment, and not only to the land. Meanwhile, states have argued that "territory" is used in connection with the sovereignty of a state. This means that the concept may have implications both for the internal and the external self-determination.[90]

Right to a healthy environment is important also in the case of indigenous peoples. The Inter-American Commission on Human Rights has recognized the close ties between the human survival and the preservation of a healthy environment and points out that environmental degradation can impair access to water and the enjoyment of several human rights, including the rights to life, health, and food. Meanwhile, in the eyes of international law, it is interesting that the Inter-American Court of Human Rights has asserted that "the right to a healthy environment, unlike other rights, protects the components in themselves, even in the absence of the certainty or evidence of a risk to individuals".[91]

[88] Shelton 2002, p.
[89] Mesa 2007, p. 95.
[90] Ulfstein 2004, p. 17.
[91] OAS 2019, p. 132 – 133.

3.4 Conclusion – can a healthy environment be considered as a human right?

As a conclusion of this chapter, it is obvious that whether human right to a healthy environment is wanted to be publicly protected by making states responsible to protect it, it needs an official status first. In addition, because there is no single and specific definition for the term of a "healthy environment", the protection of it is not an easy task. However, it needs to be remembered that whether this human right is guaranteed in a Constitution, it exists in a national level. The right to healthy environment can be guaranteed by using other rights, like a right to being healthy or a right to private life etc. As long as this term is not scientifically defined in international human rights law or other international law, there are no proper possibilities to add the term as a binding one in international law and make states to protect people's right to a healthy environment that way.

This means that now there is only a legal possibility to protect rights of the indigenous people as long as a healthy environment is not recognized as a human right or environment get the same legal rights as human beings are having. By so far, this has happened only once in New Zealand: *Te Awa Tupua* Bill was given in 2017 and gives Whanganui River human beings' rights, because a Maori tribe has told already a long time that the river is their ancestor.[92]

[92] See: Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

4. State sovereignty and responsibility to protect the environment

4.1 Introduction

4.1.1 State sovereignty, international law and environmental issues

The concept of sovereignty has a long history – it dates back to the Peace of Westphalia, a series of treaties signed in 1648.[93] Since then, the concept of sovereignty has evolved such that it mainly addresses the state with respect to the will of other nations and non-interference in its affairs.[94] Nowadays, state sovereignty is written, for instance, into the UN Charter and can be seen as one of the most important principles of current international law, because it is regulating what states are allowed to do in international environment.[95]

According to Article 2(1) of the UN Charter, the UN is based on the principle of the sovereign equality of all its Members.[96] However, it needs to be remembered that, in contemporary public international law, the concept of absolute territorial sovereignty is no longer recognized. Instead of it, it is said that the modern countries are using the principle of "good neighbourliness" instead.[97] The time when states thought that they could freely use their natural resources within their territories regardless of the impact this might have on neighbouring states is mostly over. Actually, it was written already in 1912 that a state, in spite of its territorial supremacy, is not allowed to alter the natural conditions of the territory of a neighbouring state, for instance to stop or to divert the flow of a river which runs from its own into neighbouring territory.[98]

In international law, states are the main subjects and are generally considered to be sovereign under international law. This means that they do not need to accept the authority from above or from anyone else unless they choose to do so by, for instance, becoming a member of the European Union or other group of states. Sovereignty is a socially constructed phenomenon. The requirements of a state were first defined in the

[93] Nijs 2017, p. 35.
[94] Alshammari 2014, p. 114.
[95] Mutanen 2002, p. 406.
[96] Feizabadi 2018, p. 17.
[97] https://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/mendis_0607_sri_lanka.pdf, p. 7, seen 22.2.2020.
[98] Schrijver (ed.) 1997, p. 219.

Montevideo Convention in the 1930s. According to the Convention, the state needs to have a population. In addition, without a territory, there can be no state. A state needs to also have an effective government and a capacity to have international relations in order be considered as sovereign.[99]

The Montevideo Convention also announces that no state has the right to intervene in the internal or external affairs of another.[100] The Convention has also many other fundamental rights, like the equality of States (Article 4) and the inviolability of State territory (Article 11).[101] All these rights are also important in international and national environmental law, namely no other state is allowed to intervene in other country's environmental policy because of them. Besides international law, state sovereignty is nowadays mentioned in many national laws. For instance, the Brazilian Constitution of 1988 set sovereignty, citizenship, and the dignity of human person and the political pluralism as the foundations of the Brazilian democratic State, guaranteeing the right of the citizens to more active participation in public life.[102]

Since the beginning of 2000´s, the role of state sovereignty has been an interesting question in environmental issues. It is said that, when thinking from the perspective of environmental law, state sovereignty is in contradiction with examining and preventing environmental problems, because the concern about global environment requires international cooperation instead of flagging for national rights and state sovereignty.[103]

Since the emergence of the nation-state, sovereignty has served as a central concept regarding the independence of the state in the administration of the region and disposition of natural resources without the involvement of outside parties or the intervention or other states.[104] In its territory, the state has environment and natural resources and, by relying on state sovereignty, the state should take care of them by itself. In order to achieve the goal of stopping global warming and destroying the environment, it seems that countries should accept the authority from above or from anyone else.

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[99] Klabbers 2013, p. 69 – 72.

[100] Bragdon 1992, p.381.
[101] Happold & Eden (ed.) 2016, p. 18.
[102] Morato Leite & Venancio 2017, p. 36.
[103] Mutanen 2002, p. 405.
[104] Alshammari 2014, p. 114.

States cannot exercise sovereignty in isolation because the impact of activities of one state can affect another state. The limits to the extent of exercising state sovereignty begin when such exercise of sovereignty hinges on another state's territorial rights and integrity.[105]

In environmental issues, this can happen very easily. Environmental problems do not go by states' borders, so if one country is destroying its environment, it can easily and negatively affect the neighbouring state's environment, too.[106] In cases like this, a principle belonging to customary international law comes into picture. *Sic utere tuo ut alienum non laedas* means that the property should be used in a way so as not to harm the property of others. This principle has laid the foundation of "non-harm rule" or "prohibition of transboundary environmental harm" which creates an obligation upon the states not to harm the global environment by the activities within their territories. This principle has been crystallised by the International Court of Justice and International Law Commission. In addition, there have been variations of this rule that has been adopted in different treaties relating to the protection of the environment. This obligation upon the states to not to harm the environment of the other states cannot be understood separately from the notion of the sovereignty.[107]

However, the case is not that simple: for instance, in the case of fires of the Amazon rainforests, Brazilian have basically burned the rich natural resources of the Amazon. Many international declarations and resolutions considering the administration of natural resources, such as Resolution 3171 (1973) on Permanent Sovereignty over Natural Resources, stipulate that countries should refrain from any form of coercion against any other country. This same restriction is also contained in General Assembly Declaration No. 31/91 (1976) on non-interference in the internal affairs of states. The fourth item in the declaration specifically condemns any coercion intended to prejudice the political or economic system of another country.[108] By following this attitude, it would mean that sovereignty would be the leading principle of international law and making other countries to pass the fact that some countries are misusing the concept of sovereignty in the field of natural resources administration.

[105] Feizabadi 2018, p. 6.
[106] For instance, in the case of fires in the Brazilian part of the Amazon, the fires could easily spread like a wildfire into areas that belong to other countries.
[107] Parmar 2019, p. 1.
[108] Alshammari 2014, p. 162.

Because this thesis is about environmental legislation, it needs to be understood that the role of sovereignty in environmental law is different than in international law. In environmental law, it is not taken into consideration that international cooperation should be limited as it is done in international law. In international law, it is said that sovereign states are needed to protect the environment and biodiversity in both national and international level.[109] In both environmental law and international law, sovereignty can be divided into two different parts. The first part is that of territorial sovereignty, which can be further subdivided into so called national independence and internal autonomy. The other part of sovereignty is called the territorial integrity, which protects a state from external intrusion in its domestic affairs.[110]

In addition, in environmental legislation it needs to be understood that the environmental protection has traditionally been based on national legislation. Each country intends to keep the national biodiversity by using national ways to do it. From a legal point of view, this situation is interesting, because, at the same time, biodiversity and environmental questions are belonging to both national legislation and to interests of the international community.[111] There have been international environmental treaties for a long time and, at least at the beginning of 1990's, it was questioned whether environmental law should be based on international law. Back then, the European Community was seen as one of the few international bodies that had power and possibilities to make internationally binding legislation protecting environment, because pollution does not recognize state boundaries. For this reason, it was said already back then that the only option is to set international legislation in order to guarantee that in case a sovereign country destroys environment, the international community is able to intervene the situation.[112]

However, even if states can be considered as sovereign, they have boundaries and cannot do whatever they want in their territory. The obligation not to cause harm to other nations´ environments is falling under the notion of above-mentioned territorial integrity[113], but, in this thesis, my main question is to research whether other countries have

[109] Mutanen 2002, p. 405.
[110] Nijs 2017, p. 35 – 36.
[111] Mutanen 2002, p. 406.
[112] Kälkäjä 2017, p. 75.
[113] Nijs 2017, p. 36.

a legal duty or a legal possibility to intervene a situation in which a country is destroying environment. Before discussing this topic in following Chapters, in this Chapter I am going to research whether countries, under their state sovereignty, have certain responsibilities towards the environment. These responsibilities are limiting the state sovereignty by setting boundaries to countries – because of them countries are not allowed to do whatever they want to environment in their territory by relying on state sovereignty.

> Besides the situation in Brazil which will be discussed at the end of this subchapter, *Sethusamuduram Shipping Canal Project* (1997) from Sri Lanka is a great example about the relationship between environmental harm and state sovereignty. The project would create a shipping route between India and Sri Lanka in Indo-Sri Lanka maritime boundary. The project is said to have far reaching strategic, economic and ecological implications for Sri Lanka. India has decided to implement the project, but Sri Lankans have concerns evolving around the ecosystem integrity of the seas around the island, and any adverse impact that would change the sensitive marine ecosystems affecting immediate and long-term ecological stability. In this case, the 1982 UN Convention of the Law of the Sea (UNCLOS) has a significant role.
>
> This law of international responsibility attempts to strike a careful balance between the international environmental protection and the principle of territorial sovereignty. Under Article 194(2) of UNCLOS, states shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with UNCLOS. This means that whether India would make the project come true in its territory, it would be aware of a fact that the project might pollute the Sri Lankan territory. This would break against the Article 194(2), because the activities happening under the jurisdiction and sovereignty of India would create pollution in an area that belongs to Sri Lanka.

In the end, the most significant thing to remember in this thesis is that the role of state sovereignty in international environmental law has changed during history. Although in earlier times sovereignty was seen as an absolute right of a state, today it is understood that the principle of territorial sovereignty finds its limitations where its exercise touches upon the territorial integrity and sovereignty of another state.[114]

[114] https://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/mendis_0607_sri_lanka.pdf, p. 10. Seen 22.2.2020.

4.1.2 The role of principle of non-interference in environmental issues

Contemporary international law which was reinvented after World War II articulates a number of rules and limits on state sovereignty. Internally or domestically, international law accords an extensive set of individual rights to all human beings and imposes legal duties and obligations on states to fulfil them. There are rules both externally and internationally which recognize fundamental equality of the right to self-determination and sovereignty of states and prohibit the use of aggressive force and intervention in the internal affairs of other states.[115] The prohibition of intervention is internationally known as the principle of non-interference. Intervention will be properly discussed further in Chapter 5. The principle of non-interference is related both to it and to state sovereignty, because it is both trying to protect state sovereignty and avoid the possibility of intervening into other country and harming state sovereignty that way.

Besides state sovereignty, the principle of non-interference[116] has an important role in international law. According to 2(7) of the UN Charter, the principle of non-interference means that the UN is not allowed to interfere issues that are part of a state´s national jurisdiction.[117] The principle was defined as *jus cogens* in the *Nicaragua case* of the International Court of Justice in 1986. According to this case, the principle of non-interference involves the right of every sovereign state to conduct its affairs without outside interference.[118] In addition, the UN member states are not obliged to solve such issues by using the UN Charter.

However, in a case in which the world peace is in danger, the UN has a right to break the principle of non-interference and do what is necessary.[119] Some jurists already believe that environmental catastrophes may lead to collective interventions in the future, as practice has shown that the definition of threat to peace is widening with time.[120] This development means that the principle of non-interference would be broken to a much larger extent over time in order to take care of peace. The UN Security Council stated in 1992 in Libya that, besides the non-military interferences in the social, eco-

[115] Gümplová 2019, p. 21.
[116] Notice: this principle can also be called as the principle of non-intervention.
[117] Scholtz & Verschuuren 2015, p. 257.
[118] Rattan 2019, p. 3. See the case in: https://www.icj-cij.org/en/case/70/judgments, 6.4.2020.
[119] Suhonen 2009, p. 6.
[120] Rattan 2019, p. 6.

nomic, political and humanitarian fields, the non-military interferences in the ecological field became a threat to peace and security. Therefore, considering grave consequences of environmental casualties for the entire globe, the environment catastrophes may be considered as threat to peace, and hence, legitimate collective action by the UN Security Council may be taken.[121]

In this thesis, the principle of non-interference can be seen as an interesting question: is destroying the environment such a question that the international community is allowed to violate the principle of non-interference? A good example about this principle and environmental issues' relationship is created by the "Group of 77". This group consists of developing states, for instance, Brazil. In legal terms, the position adopted by the group relies on general principles such as the sovereign quality of states, the sovereign rights of States to use their own natural resources in keeping with their developmental and environmental objectives and priorities, the principle of non-interference in the internal affairs of developing countries, non-imposition of conditionalities in trade, aid or development, and the establishment of a new and equitable international economic order.[122]

The Group of 77 sees this principle of non-interference as a way to guarantee the countries' rights to use their own natural resources, but, at the same time, sees the principle as a way to guarantee using the natural resources without other countries intervening the situation makes it more possible to misuse the local environment. For this reason, the principle cannot be used without the international community being allowed to break against it. This is not, obviously, completely understood by the current Brazilian government. In 2018, Brazil's environment minister *Ricardo Salles* announced that the discussion of whether global warming exists or not is secondary. In addition, he announced that the new Brazilian government may not exit the Paris climate deal, as *Jair Bolsonaro* had threatened during his campaign, but it will still check the most sensitive points of the environmental commitments made by earlier Brazilian governments. During this work, the current government would keep in mind that, in their point of view, national sovereignty over territory is not negotiable.[123]

[121] Rattan 2019, p. 6.
[122] Mushkat 2005, p. 32.
[123] https://www.theguardian.com/world/2018/dec/10/environmental-fines-are-ideological-says-brazil-minister-ricardo-salles, Seen 22.2.2020.

Actually, the principle of non-interference has a central role in the current debate on environmental issues. Some experts have even considered the need to overcome the limits that the principle of state sovereignty poses to intervene in the country in which an environmental disaster has occurred and provide assistance to the population.[124] Doing this would solve the problems that are mainly caused by environmental catastrophes, such as the fires in Australia in 2019 and 2020, even if there is a remarkable possibility that the fires in Australia were initially caused by humans. However, this would not solve a situation in which the environmental catastrophe is almost entirely caused by humans, like in the case of burning the Amazon in Brazil in 2019.

4.2 Do countries have a responsibility to protect the environment?

4.2.1 State responsibility and responsibility to protect in international law

State responsibility is one of the most complex issues in international law, because it is difficult to invoke state responsibility in practice and especially in the case of environment.[125] In the past, in the name of sovereignty, states had absolute authority over their citizens. For this reason, individuals were not considered to be subjects of international law.[126] International law is not binding only states anymore, but people can be bound by it, too. For this reason, today, the situation has changed at least to some extent. As well as the most important principles of environmental protection, the law of state responsibility also belongs to the customary international law and it has brought general rules to situations involving environmental harm. For this thesis, the concept of state responsibility is important, because it sets obligations to countries and these obligations might make them take care of the environment both in- and outside of the country's national borders.

> State responsibility and the environment is a topic that has also been discussed in court cases. One of the most cited ones of them is *Trail Smelter*, in which the dispute was between the United States and Canada because of the air pollution that came from a Canadian factory and caused damage to crops in the United States. According to the tribunal, no state has the right to use or permit the use of its territory in such manner as to cause injury by fumes in or to the territory of another or the properties of person therein, when the case is of serious consequence and the injury is established by clear

[124] Regna-Gladin 2012, p. 269.
[125] Kralj 2011, p. 4.
[126] Joly 2014, p. 140.

> and convincing evidence.[127] Canada was required to take protective measures in order to reduce the air pollution in the Columbia River Valley caused by sulphur dioxide emitted by zinc and lead smelter plants in Canada, only seven miles from the Canadian-US border. Canada was also held liable for the damage caused to crops, trees, etc. in the state of Washington and fixed the amount of compensation to be paid.[128]

Meanwhile, the responsibility to protect, which is also known as the R2P, is a famous principle in international law and politics. For the first time, it was mentioned in 2005 by the United Nations. Before this, right to intervene in a humanitarian situation was discussed in most cases without mentioning the responsibility. Now, this language has turned on its head by concentrating on the responsibility of all states to meet the needs of the utterly powerless and protect them against the most severe international crimes.[129] Responsibility to protect is an heir or successor to humanitarian intervention, which means cross-border intervention by military force in the name of protecting basic human rights.[130]

In international law, responsibility to protect is mostly linked to protecting human rights and especially protecting people against severe international crimes, because the international community has, by so far, only endorsed the basic idea that states have a responsibility to protect the environment in a wide range of environmental treaties, declarations, and action programs.[131] It is obvious that people need to be protected against genocides, war crimes and crimes against humanity. These are extremely important questions, as is also the fact that destroying environment severely harms humankind by making it less possible to have fresh water, food or air to breathe. Thus, it is necessary to research whether states also have a responsibility to protect the environment besides having a responsibility to protect human rights and people against severe international crimes. The focus on the responsibility to protect is essentially on human rights, and so it is said to be complicated to examine whether environmental considerations can play a role in the context of the responsibility to protect.[132]

Last but not least, the responsibility through environmental damage is one area of state responsibility. The responsibility through environmental damage is strongly linked to

[127] Kralj 2011, p. 6 – 7.
[128] Schrijver 1997, p. 223.
[129] Sihvo 2014, p. 257.
[130] Viikari 2014, p. 348.
[131] Eckersley 2007, p. 294.
[132] Viikari 2014, p. 349.

responsibility to protect the environment simply because of the latter responsibility means that states have a responsibility to protect the environment from environmental damages. Generally speaking, the category state responsibility covers the field of responsibility of states for internationally wrongful conduct. The idea is that states can be held accountable for breaches of international law. The breach could be of an international obligation established by a treaty or by customary international law, or possibly under general principled of international law. The responsibility rules for environmental damage are still evolving and in need of further development.[133]

4.2.2 The role of *erga omnes* and *jus cogens* in international environmental law – how strict rule is protecting the environment?

In legal terminology, the term of *erga omnes* means a norm that is owed toward international community as a whole and distinguished it from other obligations that are reciprocal in character. The concept of *erga omnes* enables all states to put forward claim against responsible state which breaches such obligations.[134] Meanwhile, norms that are *jus cogens* in general international law are argued as hierarchically superior. These are a set of rules which are peremptory in nature and from which no derogation is allowed under any circumstances.[135] In order to understand how binding is the norm of protecting nature and environment, in this subchapter I will briefly research whether protecting them should be considered as *erga omnes* or *jus cogens* in international law.

Most, but not all, *erga omnes* obligations are to be found in the field of humanitarian law and human rights.[136] Traditionally, prohibitions against slavery, genocide, aggression or torture have been norms *erga omnes.* The obligation to protect the environment is important for human civilization.[137] It may be asked whether the of States to protect the Earth's environment can be considered as a norm like this. This question was discussed already in 1982, when the UN General Assembly adopted the World Charter for Nature. In 1982, the UN General Assembly set the policy foundation for an obligation to protect the environment. Recently, UN Resolutions that are on harmony with

[133] Sorby, 2005, p. 47.
[134] Christianti 2017, p. 363 – 364.
[135] Hossain 2005, p. 73.
[136] Malm 2007, p. 21.
[137] Robinson 2018, p. 2.

nature build on that earlier normative foundation have been given.[138] This question has been discussed from the human rights point of view earlier in this thesis – because right to a healthy environment has not gotten an official status yet in international human rights law, it is harder to say whether protecting environment needs to be considered as *erga omnes* or *jus cogens* from this point of view.

The connection between environmental obligations and the concept of *erga omnes* is clear. Obligations that are considered as *erga omnes* are protecting the collective interest of the international community and, obviously, global environmental problems are certainly a concern of all humanity. For instance, biodiversity and the ozone-layer are crucial to life on earth and are fundamental interests of all people. Additionally, they do not follow any national borders. In addition, *jus cogens* norms are necessarily also *erga omnes*.[139]

According to some scholars, obligations that are based on the Kyoto Protocol is at least *erga omnes.* Traditionally, such obligations were thought to be restricted to the protection of fundamental rights as well prohibition of acts of aggression. However, recently international jurisprudence has recognized the protection of environment as an obligation *erga omnes.*

> For instance, this was seen in *Gabcikovo Nagymaros Case* in 1997. In this case concerning Hungary and Slovakia, Judge *Weeramantry* left a separate opinion in which he stated that there is substantial evidence to suggest that the general protection of the environment beyond national jurisdiction has been received as obligations *erga omnes*.[140] In addition, the judge stressed the importance of continuous environmental impact assessment of a project as long as it continues in operation. He also drew attention to the aspect involving duties of an *erga omnes* nature may not always be appropriately resolved by rules of procedure fashioned for *inter partes* disputes. According to him, this question needs careful consideration.

In this thesis, the main question is whether other countries are legally able to intervene in a situation in which one country is destroying environment. *Erga omnes* has a significant role in this. However, it needs to be understood that there are two kinds of countries. If one country is destroying environment, some of other countries are suffering from the destroying and some of them are not. The invocation of responsibility by a non-injured state in respect of *erga omnes* obligations is quite small. The rights

[138] Robinson 2018, p. 2.
[139] Palosaari 2018, p. 5 – 7.
[140] Malm 2007, p. 23.

of non-injured states are limited to their ability to claim that the wrongful conduct cease and a demand for reparation on behalf of the injured state or of the beneficiaries of the obligation breached.[141] This means that these countries that have not injured cannot ask for any compensation etc for themselves, only for those countries that are injured.

As a conclusion, it can be said that many obligations considering the environmental protection is at least *erga omnes* principle in international law, but the case of *jus cogens* is not that obvious. Nowadays, this question is clear in the eyes of international law, but it was written already in 1990's that *erga omnes* could in future be of relevance when global environmental problems are at issue, such as depletion of the ozone layer, the extinction of the world's biodiversity, the pollution of international waters, and the threat of climate change. The world's climate and biodiversity were identified as a "common concern" of mankind in the 1992 Conventions on Climate Change and Biodiversity.[142] This "future" mentioned in 1990's is nowadays here, and the importance of *erga omnes* is obvious in global environmental issues and international environmental law. The nature of *jus cogens* norms is stricter – the environmental protection can be considered as *jus cogens* in its hardest sense, namely the obligation to protect the environment from the most massive pollution. This means that all environmental protection is *erga omnes*, but only protecting environment from massive pollution and other huge problems is both *erga omnes* and *jus cogens.*

The only question left open for further research is that how huge these problems need to be until the norm of protecting environment becomes *jus cogens*. In the case of burning the Amazon in Brazil (see subchapter 3.3), this question is important, because the amount of burning rainforest is varying each year. This means that protecting the Amazon against burning some of the rainforest can be defined as *erga omnes* and protecting it against burning much more rainforest might already be defined as *jus cogens*, because it causes much more harm to environment. However, in this thesis this question won't be discussed, because in this thesis the main point is the situation in 2019, when Brazilians burned more rainforests than in 2018 during the burning season.

[141] Scott 2018, p. 610.
[142] Schrijver (ed.) 1997, p. 226.

4.3 The case of the burning Amazon and Brazilian state sovereignty

In this subchapter, I am discussing state sovereignty and responsibility to protect the environment in the case of the burning Amazon especially in 2019. As told in Chapter 1, this research is only limited to the Brazilian part of the Amazon and not take those 20% of the Amazon located in other countries' territories into consideration. All in all, in international environmental law, the role of the Amazon is unique – the burning lungs of the world is threatening biodiversity so horribly that there is a reason to say that protecting the Amazon from being burn is such an important norm that it at least should be *jus cogens* to legally protect the Amazon.

However, it seems that countries not existing in the territory of the Amazon rainforest have difficulties in an attempt to intervene in a situation in which Brazilians burn the Amazon during the burning season. If protecting environment can be described as *erga omnes* as was told above in the subchapter 3.2.3, the non-injured countries can only claim that the wrongful conduct cease and demand for reparation, which would basically mean reforestation.

In the case of the Amazon area, it is interesting to take into consideration whether countries not existing in the territory of the Amazon can also be seen as injured countries. They can intervene in a situation because of *erga omnes*, so it would only make their rights stronger whether they could show that they need to be seen as injured countries even if they do not exist in the area of the Amazon rainforest. In the introductory chapter of this thesis, it was told how the Amazon is often described as lungs of the world, because it is so significant for the world's ecosystem. This means that whether a country like Brazil is burning the rainforest in the area of the Amazon rainforest, this would mean that also other countries being located outside the area of the Amazon would be considered as injured countries. This would mean that also these countries would have proper possibilities to legally intervene in a situation in which Brazilians are burning the rainforests without being worried about the fact that, according to the old-fashioned idea of absolute state sovereignty, the natural resources of the Amazon rainforest that are located in the territory of Brazil are also owned by Brazil and, thus, Brazilians would be free to use them as they wish.

In the case of the Amazon area, state sovereignty would mean that every country having the Amazon rainforests in its territory would have a right to use rainforests in its

territory as they wish, but, at the same time, they are not allowed to damage the environment of other States. Luckily, this does not mean that countries are allowed to destroy those areas of the Amazon being located in their territory. Even if in 2019 it was widely told in media that Brazilians are destroying the Amazon, the lungs of the world are also protected by the South-American countries.

In September of 2019, leaders of the South American countries signed the Leticia Agreement, which is an agreement in the territory of the Amazon. The Leticia Agreement was created in order to protect the world´s largest tropical forest. The Agreement included, at Brazil´s request, the reaffirmation of "the sovereign rights of the countries of the Amazon region on their territories and their national resources".[143]

This is quite contradictory, because the member states of the Leticia Agreement shall also create a natural disaster network so they can better cooperate in the face of events like large-scale fires. They are also going to work on reforestation initiatives, increase efforts to monitor deforestation activity via satellite, develop education initiatives and increase the role of indigenous communities in sustainable development.[144] This is written into the Agreement itself, namely its introductory part encourages the international community to cooperate for the conservation and sustainable development of the Amazon region, on the basis of respect for their respective national sovereignty, priorities, and national interests.

Basically, all of this means that South American countries do not have possibilities to use their areas in the Amazon rainforest in so large scale they want to. Monitoring deforestation with help of an international agreement can cause pressure for countries to use their natural resources less than they otherwise would do, because other countries can get information about deforestation in the territory of the Amazon rainforest.

In the case of Brazil, it is necessary to understand that Brazilians have burned the Amazon rainforest because of financial reasons. As was told above, there is a particular season in Brazil, *"queimada"*, during which rainforests are burned in Brazil each year

[143] https://www.euronews.com/2019/09/07/seven-south-american-leaders-sign-forest-agreement-in-amazon-town, 9.2.2020.
[144] https://www.reuters.com/article/us-brazil-environment-amazon-summit/amazon-countries-sign-forest-pact-promising-to-coordinate-disaster-response-idUSKCN1VR2B1, 9.2.2020.

in order to obtain more land for Brazilian farmers.[145] This means that, in order to protect the environment in Brazilian rainforests, the Brazilian government should end the tradition of *queimada*. Right to work is named as a human right in many international covenants, so it is obvious that in the case of the burning Amazon, the officials need to take many different human rights into consideration and find different ways to help the Brazilian farmers without burning rainforests.

In addition, protecting rights of the Brazilian indigenous peoples is also requiring that the Brazilian government helps the farmers to end annually burning rainforests. Besides countries being located in the territory of the Amazon, also indigenous peoples of the area are wanting to use the natural resources they are considering to be their own. Indigenous peoples in Amazon are suffering from environmental degradation and also having problems with their traditional land rights. The Brazilian President *Jair Bolsonaro* has intended to use the lands of the Amazon´s indigenous people. As a result of Bolsonaro's intentions, thousands of square kilometres of indigenous people's forests were illegally taken in 2019.[146]

In Advisory Opinion OC-23/17, the Inter-American Court of Human Rights held that, in order to respect and guarantee the rights to life and integrity or the persons under their jurisdiction, states are obliged to prevent significant environmental damage, both inside and outside their territory. This regards also indigenous peoples in the area of the Amazon rainforest.[147] According to Article XIX of the American Convention on Right of Indigenous Peoples, "Indigenous peoples have the right to live in harmony with nature and to a healthy, safe and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being".

It needs to be taken into consideration that, according to the Inter-American Court of Human Rights, indigenous peoples are particularly vulnerable to environmental degradation, not just because of their spiritual ties to their territory, but also because they

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[145] https://www.nytimes.com/2019/12/05/world/americas/amazon-fires-bolsonaro-photos.html, 1.1.2020.

[146] https://yle.fi/uutiset/3-11195466, 15.2.2020.
[147] OAS 2019, p. 132.

depend for their survival and economic practices on the natural resources it harbours.[148] This is a very important point, because the destruction of the environment in the Amazon threatens the rights of local inhabitants who rely on the sites or surrounding areas for subsistence and spiritual value. Indigenous groups depend on the rainforest ecosystem of their traditional lands for food, water, herbal medicine, rattan, and other essential materials for their way of life and economic sustenance.[149]

As was told above, environmental protection has traditionally been part of national legislation, and, in the current situation, it is obvious that Brazilian officials are more concentrating on right to work than right to environment. Harmonizing international law and state sovereignty has been difficult in environmental questions already for a long time. In legal articles, it is written that environmental problems do not recognize state boundaries and, for this reason, environmental problems should be solved by international law instead of national one.[150] In the case of *queimada*, this would mean that, in order to stop the Amazon from being burned down, burning rainforests in the name of obtaining more land to farm should be banned by international law, because it would be the strongest way to guarantee that this tradition do not exist in future. It will take long time until this will happen, so it is obvious that the only option needs to be that other countries have a legal possibility to intervene a situation whether Brazilians continue on burning the rainforest also in future.

[148] OAS 2019, p. 134.
[149] Mesa 2007, p. 87.
[150] Mutanen 2002, p. 406.

5. Right to intervene in a case in which one country is destroying environment

5.1 Right to intervene and environmental law

5.1.1 Right to intervention in international law

Before discussing the actual topic of intervening an environmental catastrophe in subchapter 5.1.2., in this subchapter the role of a right to intervention in international law will be briefly discussed in a more general level. In this subchapter, the point of view is strongly related to humanitarian catastrophes, because they can be described as the most common catastrophes in which other countries are able to intervene. The intervention made to stop such a catastrophe is called a humanitarian intervention.[151] Discussing right to intervention in international law first is reasonable, because the right is typically used in cases like civil war etc., and so discussing this helps to understand the role of the right to intervene into environmental cases to much deeper extent. First, the concept of an intervention under international law is not new but is as old as the concept of state. The concept has been growing slowly and gradually since then.[152]

Intervention can be defined as a situation in which one country or multiple countries are trying to stop something illegal or otherwise negative that other country is doing, like into a civil war or severely destroying the environment. Additionally, environmental human rights were discussed earlier in this Master's thesis. Environmental human rights and other human rights need to be understood as a concept before being able to research interventions in international law, because there might be a possibility in which a country needs to make intervention because the intervened country is severely breaking against its international human rights obligations.

The law of intervention developed rapidly after World War II and especially during the Cold War. States have used to intervene in the internal affairs of other states during history. Under modern international law, the principle of non-intervention (also known as the principle of non-interference, see subchapter 4.1.2) is an international legal norm under Article 2(4) and Article 2(7) of the United Nations (UN) Charter. The principle has been also supported by the International Court of Justice (ICJ) in the Military and

[151] Note: Humanitarian interventions are made in order to stop or avoid genocide or in order to punish about it. See, for instance: Wallén 2017, p. 37.
[152] Rattan 2019, p. 1.

Paramilitary Activities in and against *Nicaragua Case* in 1986. In this case, the ICJ recognized two types on interventions, namely direct intervention through military and indirect intervention (any interference) in the domestic affairs of a state.[153] In this Master's thesis, these different kinds of interventions have been properly discussed in subchapter 5.3.

Since the time of *Hugo Grotius* (1583 – 1645), there has been an idea in international law that each state should be free and equal and independent in all those things that concern that state's domestic or "sovereign" affairs.[154] State's sovereignty has been properly discussed in this thesis in Chapter 4. According to the Article 2 (para. 7) of the UN Charter, states' liberty requires that all nations promote "respect for human rights and fundamental freedoms for all and that outsiders not interfere in matters which are essentially within the domestic jurisdiction of any state". This means that intervening a situation in which Brazilians are burning their area of the Amazon rainforests is problematic, because, in international law, natural resources are regulated under national legislation and the question whether burning the state's own natural resources is such that it can be intervened by other states can be highly questioned unless another country gets injured in this.

Nowadays, intervening into other country is not the first option in the international law. The international community has witnessed and encouraged a movement towards restricting the intervention of one state in the matters of another, now commonly known as the duty of non-intervention. This means that states must refrain from intervening in affairs which essentially belong in the domestic jurisdiction of other sovereign nations. This duty belongs to customary international law and was omitted from the UN Charter as an explicit rule vis-à-vis States, but it is mirrored in the document in other respects: for instance, Article 2(7) prohibits the UN from intervening in the domestic matters of its states. Nevertheless, these are only small reflections and customary international law is the primary legal source for the principle. It has a firm grounding in international relations at least on paper.

[153] Rattan 2019, p. 1.
[154] Sellers 2014, p. 1.

Contemporary international law has characterised international humanitarian intervention with non-specific features. Even under existing international legal regulation, determining the specific legal rules on this subject can be challenging. Difficulties are existing despite the adoption of above-mentioned customary rules. It is possible that this situation is the result of circumstances in the period when contemporary international law was drafted. After World War II and during decolonisation, the framers of this law did not encourage the use of force by a stage or group of states in the internal affairs of another country. The main objective was to achieve global security and stability at a time when the world was suffering from wars, killing and destruction. Human rights were not a major priority.[155] As a conclusion, it is obvious that this situation has also affected countries' possibilities to make ecological interventions, because ecological interventions have developed after people started to understand that there is a need to make military and non-military interventions also to crises considering environment and not only people.

However, states continue to intervene in the affairs of others despite regulation.[156] In the environmental law, the duty of non-intervention is an interesting phenomenon. Because natural resources are mainly regulated by domestic jurisdiction, it is hard to think at this point that there would be any trustworthy arguments to make an intervention because of one country is destroying its environment and natural resources. The so-called ecological interventions, namely interventions made because of environmental reasons, and reasons to make them legal and justified, are discussed further in this Master's thesis.

Right to intervention is a very close topic to state sovereignty, which was discussed above in the Chapter 4. State sovereignty is not an absolute principle, and so right to ecological or other forms of an intervention is needed in a situation in which one country is severely breaking against the law in a way or another. During the 21st century, a group of researchers of international politics found out that there was a need to explain how the international system and its institutions started to change more and more to be like legal institutions in national systems. This had lots to do also with the concept of interventions. Both international courts and other international actors have started to be like national legal actors. For instance, both environmental and weapon agreements

[155] Alshammari 2014, p. 109 – 110.
[156] Tuura 2019, p. 42 – 45.

are mainly suggestive political agreements, which have become to be like "hard law", which generally refers to legal obligations that are binding on the parties involved and which can be legally enforced before a court.[157] Despite this development, it has not happened everywhere at the same time and as strongly as somewhere else. For instance, rules set by international courts or the World Trade Organization are not always strictly followed and even some military interventions are still made without a legitimising decision based on international law.[158]

Additionally, it is important to understand that there is no single form of intervention in international law. The main focus of this thesis is in the so-called ecological interventions. Before them, international lawyers were talking about a right of economic intervention and humanitarian intervention. Nowadays, a right of political intervention is already invented. Because of a possibility of intervention, state sovereignty (See Chapter 4) of natural resources has never been weaker than now.[159] This is a good example about the fact that, despite the duty of non-intervention, the possibility of intervention has significantly affected international environmental law and politics considering especially the use of natural resources.

Besides different forms of an intervention, there are also some interventions that are forcible and some that are non-forcible, such as the provision of humanitarian aid (food, medicine etc.) that could constitute as "a humanitarian intervention". However, intervention in its classical incarnation is generally considered to involve the use of force, these non-forcible actions are often described as "humanitarian assistance" instead of an intervention.[160] The topic of this thesis, an ecological intervention, can be made as either forcible or non-forcible intervention depending on the fact whether a country wants assistance from abroad or not.

[157] https://www.ecchr.eu/en/glossary/hard-law-soft-law/, 1.3.2020.
[158] Koirikivi 2016, p. 18.
[159] Kazimieras Zavadskas (ed.) 2005, p. 388.
[160] Lachemann & Wolfrum 2017, p. 468.

5.1.2 Right to intervene into an environmental catastrophe

5.1.2.1. The definition of an ecological intervention

Before discussing the actual topic, the term of an ecological intervention needs to be defined. Considering other types of intervention, for example the humanitarian intervention, it is sometimes hard to say when will it be an ecological intervention. This is an important question, because when an intervention needs to be made, it needs to be decided whether there is a need only for a humanitarian intervention and not for an environmental one. For instance, a war can be indirectly caused by an environmental disaster and then it might be hard to say what kind of an intervention is needed. The interests of the different states can be tremendously different, and so there might be huge difficulties to find an agreement on such a definition without emptying it too much. Actually, the concept of ecological intervention should go beyond a simple humanitarian response when an environmental catastrophe occurs. It would be appropriate to think about a long-term action and not only about a specific and short-term intervention.[161]

According to many environmentalists, solving environmental problems around the world collides with the concept of state sovereignty, which was discussed in the previous Chapter of this thesis and should be in this case and to a certain extent, surpassed. The environment cannot be seen as an area that needs to be processed at national level. The concept of an ecological intervention is mainly developed by *Michel Bachelet* and it is reasonable to use his definition at this point. According to him, the protection of the planet has to go through multi-sector standards, standards of international solidarity to prevent and tackle the most serious risks to which the planet will be exposed. Under the auspices of a sort of a right to humanitarian assistance and in the name of international solidarity, the concept of an ecological intervention could overcome the limits imposed by the principle of sovereignty, which prohibits intervention in the country, which suffered an environmental disaster.[162]

[161] Regna-Gladin 2012, p. 271 – 272.
[162] Regna-Gladin 2012. p. 270.

5.1.2.2 Intervening into a local environmental crisis

Today, there are many different environmental crises threatening the world ecosystem. The greenhouse effect, global warming, the hole in the ozone layer and acid rain are important crises to be solved,[163] but, in this Master's thesis, they will not be discussed. Instead, I will concentrate on the phenomena that are happening locally and into which a foreign country can make an intervention.[164] In these environmental phenomena I am concentrating on, the most significant term is environmental harm. Environmental harm can be divided into three different categories, namely 1) major environmental emergencies with transboundary spill over effects that threaten public safety in the wider region; 2) ecocide or crimes against nature that also involve genocide or human rights violations (irrespective of spill over effects); and 3) ecocide of crimes against nature that are confined within the territory of the offending state and which involve no serious human rights violations.[165] The term "ecocide" can be defined as the destruction of large areas of the natural environment as a consequence of human activity.[166]

When it was suggested that the term ecocide would be amended into the Rome Statute, the term was defined as "the extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished".[167] Previous examples of environmental crimes have shown that the anthropocentric or eco-centric balance of this definition is largely depending on whether the mentioned "inhabitants" are restricted to only *human* inhabitants. However, the notion of this is usually presented as representing eco-centric values. This means that those "inhabitants" mentioned in the definition would mean both people and animals.[168] These inhabitants can be helped by an ecological intervention. In legal literature, the

[163] See: https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095753543, 26.2.2020.
[164] However, it needs to be remembered that there are also possibilities to make interventions into above-mentioned environmental crises that are not discussed in this thesis. For instance, mitigation is a suitable example of this. The Intergovernmental Panel on Climate Change (IPCC) has defined mitigation "an anthropogenic intervention to reduce the sources or enhance the sinks of greenhouse gases". This definition has become predominant in the international literature. See: Engel, Westra & Bosselmann (ed.) 2010, p. 348.
[165] Rosenthal & Barry 2009, p. 135.
[166] https://www.merriam-webster.com/dictionary/ecocide, 29.2.2020.
[167] https://ecocidelaw.com/the-law/what-is-ecocide/, 7.4.2020.
[168] Hall 2015, p. 63.

idea of it has been said to allow victims of an environmental disaster to claim for a right to assistance and international legal protection if neglected or ignored by their own state's shortcomings or failure. Reaching out and assisting victims of natural or environmental disasters would not be an infringement of state sovereignty but an ecological assistance.[169]

The truth is that the environment will not so easily become a cause for intervention, and there are so many different parts and aspects in the concept of environment that intervening it would be difficult. However, this is not the same when it comes to some of its parts, such as tropical forests. Topics like rainforests are more easily arousing public concern. It would be much more difficult to intervene topic like climate, because it would be difficult to justify why the United States and Europe can spend as much energy on polluting while China and India cannot perform their traditional breeding and Brazilians cannot open new agricultural frontiers at the expense of the rainforest.[170] It is obvious that all countries should be equal in international community, but this has not completely happened yet. This makes it harder to stop environmental catastrophes and the climate change.

As "lungs of the world", the role of the Amazon in the global context is so huge that it is understandable that the French President *Emmanuel Macron* has used expressions like "our Amazon" and told how the international community has a duty to prevent forest burning. It is already even suggested if the Amazon should gain an international status and not be taken care of only by Brazilians.[171] Taking care of this duty to prevent by the international community would mean intervening the state sovereignty of Brazil. The case is the same in all other environmental catastrophes.

Despite the vitally important role of the Amazon for the whole humankind and ecosystem, there are also many other cases in which it would be reasonable that other countries would make an intervention in order to save important pieces of nature. Both into the Amazon and into other areas, there is a right to make a so-called ecological intervention, which means an intervention is made either in a military (See subchapter 5.3.1) or a non-military form in order to protect the environment especially in an environmental catastrophe. There are some significant differences between an ecological

[169] Regna-Gladin (ed.) 2012, p. 271.
[170] Dias Varella 2019, p. 22.
[171] Dias Varella 2019, p. 25.

intervention and other forms of intervention. Ecological interventions operationalize what the Human Rights instruments stipulate as principles. Where other forms of an intervention leave the implementation to national and international organizations, thus offering at least a possibility for countries to participate, the supposed right of ecological intervention excludes that possibility.[172]

Recently, the need to deliberate extensively on environmental issues has been highlighted in international discussions, due to the complexity of environmental issues and due to the various conflicts, that arise in any given situation. A starting point for deliberation, from the point of view of ecological citizenship, is the concept that human laws and human right have to be tempered by the acknowledgement that human interests are intimately bound up with the well-being of the planet as a whole. All kinds of human interventions need to be considered in the light of this. In addition, the importance of the precautionary principle has potential and real impacts arising from human activity. Instead of concerning the protection of specific individuals or considering particular human rights, interventions need to be planned on the basis of intergenerational equity or biosphere integrity by keeping the whole ecosystem and humankind in mind instead of individuals.[173]

In addition, it is already said that it is quite possible that the present socioecological crisis is so severe that it needs to be intervened.[174] It should be noted that this term is not representing any traditional form of intervention and is meaning that rights, powers and responsibilities are openly or more often tacitly re-negotiated. Whether people are not voluntarily waiving their rights and powers, governmental powers might get a need to make them to do it meanwhile they might have a need to tacitly give people more responsibilities to take care of the environment.

As the last point, it needs to be remembered that intervening into an ecological crisis is also important in order to be sure that the number of refugees will not become insuperable. As it has been the case with the proposition of extending the definition given by the 1951 Refugee Convention or concerning of a new specific Convention on climate refugees, arguments for or against the idea of an environmental intervention

[172] Kazimieras Zavadskas 2005, p. 388.
[173] Beirne & South 2007, p. 47.
[174] Daly & May (ed.) 2018, p. 17.

quickly arise.[175] Basically, this means that whether countries are not given a chance to intervene in another country in a case the help is needed, people need to flee from their homes and travel outside the territory suffering from the environmental catastrophe. This would require much more capacity than whether states could intervene in the situation straight away when it is happening.

5.1.2.3 Can an environmental crime be defined as a crime against humanity?

5.1.2.3.1 The importance of *actio popularis*

When determining whether there is a reason to make an ecological intervention, the idea of *actio popularis* needs to be taken into consideration. Originally, *actio popularis* is an ancient idea from Roman law that every (male) member of society could bring an action relating to any legal matter, provided it was in the interest of public welfare.[176]This principle still belongs to modern international law. It is nowadays defined as a public or universal right to initiate a lawsuit or prosecution. In domestic law, this term is often used to refer to a right of private citizens to bring a legal action on behalf of the state. However, in international law this principle is still a matter of controversy.[177] From an environmental point of view, it is defined in a great way in, for instance, the Hungarian Act on the General Rules of Environmental Protection, which states that whether "the environment is being endangered, damaged or polluted, organisations are entitled to intervene in the interest of protecting the environment". This includes filing a lawsuit against the user of the environment.[178]

While Hungarians are talking about organisations, in this thesis it needs to be researched if the idea of *actio popularis* is also considering states and what this idea means to them in environmental questions. First of all, the principle of *actio popularis* is used as a means of enforcing obligations owed *erga omnes* (owed to the international community as whole) or owed *erga omnes partes* (established to protect collective interests of group of states and the general interests of states parties to the international

[175] Regna-Gladin (ed.) 2012, p. 271.
[176] Burke 2013, part III
[177] Fellmeth & Horwitz 2009, p. 12.
[178] Council of Europe 2012, p. 176.

legal instrument).[179] In this thesis, the role of *erga omnes* was described in the subsection 4.2.2, in which it was stated that protecting the Amazon rainforests from burning needs to be described at least as *erga omnes*, so this means also that *actio popularis* can also be used to enforce obligations that are considering the environmental protection.

However, there are some problems that need to be taken into consideration before the principle of *actio popularis* can be used in this. States have been reluctant to devise centralized mechanisms to enforce community interests. In addition, states have been cautioned by the high risk of decentralized enforcement turning into disguised protection of individual interests of powerful states against the weak.[180] In questions related to environmental protection, there is a high possibility that this would mean a situation in which powerful states would create such international norms that they can destroy environment and make pollution as much as they have done before and only make smaller and weaker states to try to take care of their obligations and protect the environment. This means that it would be necessary to create a common system of environmental protection law that makes all countries to take care of their obligations in the same way, because all people in the world are sharing the same interest of saving the planet.

Before such a system *actio popularis* is already giving possibilities to states. Whether a state has, in the absence of a specific treaty right, a general interest in the protection of the environment in areas beyond its national jurisdiction such as to allow it to exercise rights of legal protection on behalf of the international community as a whole. This is sometimes referred to as *actio popularis* and, as a question, it remains difficult to answer in the absence of state practice.[181]

In this thesis, this can be seen as an interesting question, because it can be asked whether countries being located outside the area of the Amazon rainforests have a general interest in the protection of the rainforests. The Amazon area is extremely important for the whole world's ecosystem, but it is in an area beyond most of the countries' jurisdiction. However, because of having an important role in the world, there is a reason to say that even without a specific treaty right, other countries have a general

[179] Ahmadov 2018, p. 27.
[180] Ahmadov 2018, p. 27.
[181] Sands 2003, p. 187.

interest to protect the Amazon rainforest. Because of having such an interest, they at least should have a right to exercise rights of legal protection on behalf of the whole international community. This means that they could also have a right to intervene into a situation whether Brazilians are still continuing on the tradition of burning the Amazonian rainforests in future despite the international criticism.

5.1.2.3.2 An environmental crime as a crime against humanity

As told above, burning the rainforests in the Amazon area is causing problems for both indigenous peoples and the whole humankind. Destruction of the world's largest rainforest may accelerate climate change and so cause further suffering worldwide and also destroy the Amazon indigenous peoples' traditional residential areas. For this reason, Brazil's former environment minister, *Marina Silva*, has called the burning Amazon a crime against humanity.[182]

However, a huge environmental destruction like this is not properly regulated in international criminal law and it is not totally clear whether such environmental destructions can be considered as crimes against humanity or as other international crimes at all. Even if the situation is causing problems for the whole humankind, it would be unprecedented if it would be legally considered a crime against all humanity and could be prosecuted in the International Criminal Court (the ICC) for this reason.[183] In this thesis, this topic needs to be discussed, because by prosecuting environmental crimes that are mainly caused by destroying natural resources the ICC is partly intervening state's sovereignty to use its natural resources by claiming that the state has misused its sovereignty.

It needs to be understood that prosecuting environmental crimes as crimes against humanity in the International Criminal Court could already be possible. Environmental destruction and landgrabs could lead to governments and individuals being prosecuted for crimes against humanity by the International Criminal Court. According to the International Criminal Court, it would also prioritise crimes that result in the destruction of the environment, exploitation of natural resources and the illegal dispossession of

[182] https://www.opendemocracy.net/en/democraciaabierta/marina-silva-los-incendios-en-el-amazonas-son-un-crimen-de-lesa-humanidad-en/, 1.1.2020.
[183] https://theconversation.com/are-the-amazon-fires-a-crime-against-humanity-122738, 1.1.2020.

land. This does not mean that the International Criminal Court has not formally extended its jurisdiction, but has announced that it would assess existing offences, such as crimes against humanity, in a broader context. This would especially apply to situations of land-grabbing.[184]

> The International Criminal Court has already had a need to solve a case in which a victims' request to investigate a case of environmental destruction by *Chevron* in Ecuador. The case was rejected by the Prosecutor of the ICC on jurisdictional grounds. However, it took a little over a year after this, until the Prosecutor of the ICC released on 15 September 2016 a policy paper indicating that her office would consider hearing cases of environmental destruction.[185]

In 2016, the International Criminal Court Prosecutor *Fatou Bensouda* wrote that in environmental issues, the assessment of the impact of the alleged crime would consider "the environmental damage of the affected communities".[186] The impact of the crimes may be assessed in many ways, for instance, in the light of the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. In a context like this, the Office of the Prosecutor of the International Criminal Court has described that the Office will consider prosecuting Rome Statute crimes that are committed by means of, or that result in, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.[187] The Rome Statute has room in its interpretation to incorporate specific instances of environment harm as a "crime against humanity".[188] However, the *prima facie* language of the Statute contains only one single mention of the word "environment". This mention is contained in a provision that requires an incredibly specific set of circumstances. According to the Rome Statute, individuals may be prosecuted for violating "war crimes" for:

> "Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."[189]

[184] https://www.theguardian.com/global/2016/sep/15/hague-court-widens-remit-to-include-environmental-destruction-cases, 1.1.2020.
[185] Lambert 2017, p. 707.
[186] Durney 2018, p. 413 – 414.
[187] ICC 15.9.2016, p. 14.
[188] Durney 2018, p. 415.
[189] Durney 2018, p. 416.

In addition, the Office of the Prosecutor of the International Criminal Court will also seek to cooperate and provide assistance to States, upon request, with respect to conduct which constitutes a serious crime under national law, such as the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment.[190]

Even though prosecuting Brazilians because of fires in the Amazon would be unprecedented, it would obviously still be possible despite the above-mentioned wording of the Rome Statute in which severe damage to the natural environment is only mentioned in the case of war crimes. The answer for the question in the headline of this subchapter is that the situation in Amazon can be defined as a crime against humanity because of the Amazon's importance for the whole humankind.

According to the Rome Statute, crimes against humanity are defined as specific acts "committed as part of a widespread attack directed against any civilian population, with knowledge of the attack". The Statute is further defining "widespread or systematic" and "attack directed against any civilian population" as "a course of conduct involving the multiple commission of acts … pursuant to or in furtherance of a State or organizational policy to commit such attack".[191] The link between the definition of a crime against humanity in the Rome Statute and the fires in the Amazon especially in 2019 is an interesting question – due to the President of Brazil's encouragement, the fires were very widespread and, in addition, they can be considered as an attack towards indigenous peoples' populations residing in the territory of the Amazon rainforests.

The only thing that is yet to be solved is that whether the International Criminal Court or any other international court is a right route to prosecute a possible crime against humanity committed by Brazilians during the burning season in an extent threatening the Amazon ecosystem. It has been written in legal literature that there might be a reason to regard the wilful of reckless perpetration of mass extinctions and massive ecosystem destruction as "crimes against nature" such as to support a form of ecological intervention and an international environmental court. Supposedly, there might be

[190] ICC 15.9.2016, p. 5.
[191] Durney 2018, p. 416 – 417.

a reason to create a new term of "ecocide" to exist as an environmental form of genocide.[192]

> In addition, it needs to be taken into consideration that severe environmental crimes can be made alongside severe international crimes that are mainly targeted against people. Insofar ecocide also produces direct, immediate, and grave consequences for humans, involving large numbers of deaths and/or significant human suffering on a par with genocide or crimes against humanity. The decimation of the marsh region, the homeland of the Ma'dan, or Marsh Arabs, by Saddam Hussein's Baathist government is a case in point. The large-scale, government-sponsored drainage of the marsh region has been ecologically catastrophic and directly implicated in human rights abuses against the Marsh Arabs, who were also the most persecuted of the Shia Muslims in Iraq because of brutal murders, torture, imprisonment, forced expulsion and disappearances. These crimes constituted genocide and crimes against humanity. Upholding the human rights of Marsh Arabs therefore provides one indirect means of protecting the marsh region, and vice versa. As a result, today the operation in the area of Marsh Arabs can be called the military intervention to stop ecocide that also involves genocide "eco-humanitarian intervention."[193]

The fact that the International Criminal Court is nowadays also prioritizing crimes that result in the "destruction of the environment", "exploitation of natural resources" and the "illegal dispossession" of land does not mean that the Court would formally extend its jurisdiction in any way, but it said it would assess existing offences, such as crimes against humanity, in a broader context. By doing this, this Court that is funded by governments and was set up in 2002, is answering to a critic it has gotten for its reluctance to investigate major environmental and cultural crimes, which often happen in peacetime.[194] It is understandable that the International Criminal Court is indeed concentrated on such crimes that are directly causing a threat to people by other people, but it needs to be understood that by destroying the Amazon rainforest or other nature people are setting the humankind in even bigger danger.

Because major environmental and cultural crimes are often happening in peacetime, it can be questioned whether the ICC should change the wording of the Rome Statute and include at least environmental crimes into the wording of also such crimes that can happen in peacetime. Even if the wording of the Rome Statute is already meaning that there is a possibility to prosecute environmental crimes as crimes against humanity, there is a reason to say that changing the wording of the Statute would be the best

[192] Rosenthal & Barry 2009, p. 131.
[193] Rosenthal & Barry 2009, p. 137 – 138.
[194] https://www.theguardian.com/global/2016/sep/15/hague-court-widens-remit-to-include-environmental-destruction-cases, 29.2.2020.

option to guarantee that environmental crimes can be prosecuted by the International Criminal Court.

5.2 Making the intervention by the country's invitation

In some cases, there is a possibility that the country, which has a crisis on going, wants that other countries will intervene the situation in order to stop it, because the country is not able to stop the crisis on its own. States have frequently justified interventions in internal armed conflicts by claiming they were invited to assist one of the belligerent parties. In most cases, this party is the government, and only very rarely the invitation comes from a rebel group fighting against the government.[195] Interventions by invitation are researched by various schools of taught. This needs to be understood, because different schools of taught are not thinking the same way about, for instance, what can be defined as an invitation. For instance, the English school of taught is simply saying that the invitation is mostly happening simply when another country is asked to do something.[196]

However, all interventions by invitation are not made in a military form, even if most crises are such situations in which foreign military help is needed. In this chapter, my intention is to discuss if a country has a legal possibility to ask for help by asking other countries to intervene in a situation in which environment is in danger because of either an environmental catastrophe or because of people destroying the environment. It needs to be taken into consideration that the expression "intervention by invitation" is mostly used as a shorthand for military intervention by foreign troops in an internal armed conflict at the invitation of the government of the state concerned. In a wider sense, intervention by invitation could conceivably also cover non-military interventions as well as military interventions by the invitation of other actors than the government.[197] Non-military interventions by invitation are the most suitable term to be used in a situation in which a country is in need of help because of an environmental catastrophe.

[195] Fox 2015, p. 1.
[196] Wallén 2017, p. 7.
[197] Lachenmann & Wolfrum 2017, p. 583.

It seems to be obvious that the use of force in international law means only using armed force in a certain situation. It has been proposed that economic measures would be included into the notion of force under Article 2(4) UN Charter, but this proposal was rejected during its drafting process.[198] However, even if most of the interventions can be considered as "negative", there are also "positive" interventions and these are the ones that are most probably made with the country's permission. Reforestation is a good example of this – the country suffering from deforestation is able to ask for economic and environmental help to reforestation in degraded areas in order to restore the nature. Even if other forms of an intervention by invitation are described as less relevant than military interventions in legal literature[199], it is reasonable to say that non-military interventions by invitation can be a very relevant form of an intervention in a case a country needs help to solve a huge environmental catastrophe or other environmental problem.

It needs to be remembered that an intervention and even a military intervention with the consent of the government of a state is not precluded. There are lots of difficult questions arising from this topic: for instance, intervention by invitation is notoriously open to abuse. This is mainly happening when another country is intervening in a civil war on the side of the government while the request is unlawful.[200] However, there is also a chance that the intervention by invitation made as the form of an ecological intervention is made illegally or is in some other way open to abuse, so the country which is making the intervention needs to be sure that its actions are based on laws.

5.3 Different ways to use the right to intervene in international environmental law

5.3.1 Military intervention made as an ecological intervention

Interventions are one form of a military crisis management. Goals of the military crisis management are international security, securing human rights, securing economic and political interests of third parties and, depending on the current possibilities, prevention of environmental problems. The military crisis intervention can be divided into

[198] Visser 2019, p. 25.
[199] Lachenmann & Wolfrum 2017, p. 583.
[200] Jamnejad & Wood 2009, p. 378.

peacekeeping, peace enforcement and humanitarian interventions.[201] In environmental questions, this means that military interventions can mainly be made as an ecological intervention in cases in which an environmental catastrophe is or is about to become a threat for peace and public safety. However, military interventions are nowadays used also in other ways in the field of environmental conflicts – for instance, in Peru, authorities have increased penalties for committing a public order offence, made it easier for the military to intervene in social-environmental conflicts, and supported impunity for official abuses.[202]

Environmental intervention is related to environmental security. The environmental security can be guaranteed in many ways and is the way to prevent environmental problems in both peace and war. As an idea, it is not new to use force to protect and secure the ecology of the globe. Environmental security is linked to human security, and the idea of the latter one dates back to just after World War II. Both academic and policy making definitions of human security can differ immensely. Most can agree on the importance of securing the welfare of the individual and the rising importance of non-state actors in the system. Human security includes environment security as it relates to the health and welfare of the individual.[203]

National interest concentrates on the defence of the individual. Mostly, it has concentrated on humanitarian interventions, like the presence of the United States and the United Nations in Somalia and Rwanda in the early 1990s. However, the concept of intervention has developed. Recently, a new term of "ecological intervention" has been brought up in order to describe military intervention, or the threat of it. This intervention is done without the consent of the state as a method to prevent grave ecological damage.[204] Ecological interventions do not need to be made in the times of armed conflict but also with respect to, for instance, open-air testing of nuclear weapons, nuclear plant accidents, disposal of nuclear waste of oil spills.[205]

Meanwhile, the term of "ecological defence" means preventive use of force in response to the threat of serious and immediate environmental harm flowing into the

[201] Oikarinen 2008, p. 10.
[202] Raftopoulos 2017, p. 398.
[203] Dreyer 2011, p. 1 – 2.
[204] Dreyer 2011, p. 2 – 3.
[205] Bélanger 2011, p. 50.

territory of a state that is a "victim" in a case.[206] In legal literature, the term "ecological intervention" has, however, sometimes been restricted to specifically military intervention into another country, to prevent major catastrophe. In literature Chernobyl-like nuclear meltdown and the genocide of mountain gorillas are mentioned as examples about such possible environmental catastrophes in which other countries might make a military ecological intervention.[207]

When discussing this topic, it needs to be remembered that there are some environment-specific international treaties that regulate war and are said to be the most likely legal precedents for ecological-humanitarian interventions. They are the UN Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1976); the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (1977); and the Rome Statute of the International Court (1998). Instead of actually protecting the natural environment, the first one of these treaties prohibits deliberate modification of natural processes such that they are used as weapons of war. The latter ones are designed to protect the environment – for instance, Article 35(3) of Protocol I prohibits any methods or means of warfare that can cause "widespread, long-term and severe damage to the natural environment."[208]

Ethically and legally, ecological intervening to prevent grave environmental damage can be seen as justifiable if it is a multilateral operation designed to fight transboundary spill over effects. Besides them, military ecological interventions can be justifiable in a case of ecocides that involve serious human rights violations and in ecocides that involve no serious human rights violations.[209] Even if this good intent is taken into consideration, environmental intervention is a gateway to wider conflict and, thus, the only solution is to run a risk assessment before starting the environmental intervention.[210] In the risk assessment all aspects of the possible intervention need to be evaluated in order to see the whole picture and whether there is some other possibility to stop destroying the environment and avoid the intervention that way.

[206] Eckersley 2007, p. 293.
[207] Yang & Young (ed.) 2019, p. 77.
[208] Woods 2007, online version.
[209] Humphrey 2007.
[210] Dreyer 2011, p. 2 – 3.

It is not surprising that the question of military intervention to secure environmental protection has so far received only limited treatment by international lawyers and even less attention from political theorists and moral philosophers interested in global sustainability and environmental justice. Most ecological problems rarely constitute a high level of threat, offer only a short period of warning, and require the need for a rapid military-style response.[211] However, it was written already in 1990's that ecological intervention should be different in nature. Instead of being carried out just by professional soldiers, local people, scientists and many experts should get involved in such action, because they would have much more know-how to take care of the local environment than the soldiers have.[212]

> There are only a few examples about using military force in order to prevent environmental harm. However, in 1995 Canadian naval forces seized a Spanish fishing vessel (Turbot War) on the high seas in an effort to prevent overfishing of migratory stocks that were central to the viability of the Canadian fishing industry and this can be considered as an example of an ecological intervention made by using military force.[213]

It is important to understand that military interventions also in a form of ecological interventions must be consistent with, or at least be precedent in, international law. In addition, the intervention needs to be accepted as legitimate or "rightful" by most states, which means that it must transcend the cultural and political proclivities of powerful states and reflect norms that are common to developed and developing countries alike. However, the status of an intervention as an international norm is quite questionable. Humanitarian interventions have a longer history than ecological interventions, but even they have only an "emergent" rather than "settled" status as an international norm precisely because the legal, moral, and political arguments have yet to coalesce.[214] Such an attitude towards humanitarian interventions might also set ecological interventions in a much more difficult position in international level, because the international community has not experienced them as many times as humanitarian interventions have happened during history.

The originality of an ecological intervention from other humanitarian interventions is that its precedents were operationalized to protect the rights of those people dwelling in the intervened states. In as much as ecological intervention secures the rights of

[211] Eckersley 2007, p. 294 – 295.
[212] Baslar 1998, p. 155.
[213] Eckersley 2007, p. 296.
[214] Eckersley 2007, p. 297.

peoples living outside the intervened states, it aims to protect the majority rather minority. That means that if the international community believes that intervention is justified to protect the right to life of, let's say, five million Kurds, why should not the same intervention be justifiable to protect the survival of five billion human beings.[215] This aspect needs to be understood, because by making ecological interventions foreign armies would protect human rights. For instance, in the case of the Amazon (See subchapter 5.4) this would mean protecting the rights of all mankind and also the human rights of indigenous peoples living in the area of the Amazon, because the surviving Amazon is important for every human's survival.[216]

Finally, it needs to be remembered that the military intervention itself can often result in heavy civilian casualties and environmental damage, which is one of the many factors that lie behind the general pacifist orientation of most environmentalists. For this reason, it is important to understand the difference between an ecological intervention made by army and other military intervention having negative consequences for the environment. Factors making general military interventions environmentally unfriendly make military interventions politically hazardous, even in the circumstances where the moral case might otherwise seem compelling.[217]

In addition, it is said that there is a possibility to define a humanitarian intervention also an ecological intervention. However, they are thinking that the ecological intervention is problematic because of environmental damage resulting of a military intervention. Even more problematic would be widening the term of ecology to protect all kinds of interventions.[218] The advantage of ecological defence over ecological intervention is that it avoids these hazards by reinforcing rather than challenging the prevailing norm of non-intervention. Generally speaking, military intervention should always be a last resort, even in cases of imminent ecocide or crimes against nature, and the consequences of non-military forms of intervention, whether coercive, semi-coercive or consensual.[219]

[215] Baslar 1998, p. 153.
[216] Baslar 1998, p. 152 – 153.
[217] Rosenthal & Barry 2009, p. 147.
[218] Oikarinen 2008, p. 81.
[219] Rosenthal & Barry 2009, p. 147.

5.3.2 Economic interventions as a method to intervene into an environmental crisis

5.3.2.1 Economic boycotts and other economic sanctions as a form of economic intervention

In today's world, the importance of foreign trade is in a very high level. This has also had a strong influence in international policy, while foreign countries have reasonable possibilities to create an economic intervention into a foreign country by using economic boycotts and other trade sanctions.[220] These kinds of decisions make it more difficult for an intervened country to make international trade and earn money. For this reason, they are very powerful ways to make an intervention. However, using economic sanctions is a very powerful way to make an intervention despite the fact that such an intervention does not require intervening in the country's territory.

In this Chapter 5.3.2, legally used ways to intervene a situation economically into a situation in a foreign country will be discussed in a general level before discussing Mercosur, a public trade agreement between the European Union and four South American countries in Chapter 5.4.2. By refusing to sign the agreement, many European countries have tried to force Brazil to stop burning rainforests. This is a very good example about the current character of economic sanctions and how they can be used in a fight against the climate change. Originally, economic sanctions developed to be this powerful in 1990s. Before that, they were initially envisaged as being targeted against States, but the humanitarian impact of comprehensive sanctions became the source of increasing concern and then these concerns led to the UN Security Council developing a more refined approach to the design, application and implementation of economic sanctions with the objective of making sanctions regimes more effective by targeting them more precisely on their political objectives.[221] In the case of Mercosur, stopping the destroying of the Amazon rainforests was a clear political objective that could easily be targeted by refusing to sign the agreement.

In August of 2019, it was told the European Union did not, at that time, think of setting sanctions against Brazil. An economic intervention in the form of trade policy was not seen as an option, because there were fires in forests in Southern Europe, Russia and other countries. Political discussions were preferred instead of sanctions, because that

[220] It should be noted that, besides trade sanctions, there can be military, political, diplomatic and cultural sanctions, etc. See: Ilieva, Dashtevski & Kokotovic 2018, p. 202.
[221] Happold & Eden (ed.) 2016, p. 135.

way it was possible to discuss reforestation and stopping deforestation.[222] The term "sanctions" under international law generally refers to coercive measures, taken by one state or in concert by several states, which are intended to convince or compel another state to desist from engaging in acts violating international law. Meanwhile, in international relations the concept of "sanctions" is referring to a certain type of measures, but which can serve a variety of purposes, namely to coerce of change behaviour; to constrain access to resources needed to engage in certain activities; or to signal and stigmatize.[223]

The international legal basis of economic sanctions is in the article 41 of the Chapter VII of the UN Charter, which stipulates that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decision, and it may call upon the members of the UN to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. However, article 41 does not delineate in which situations sanctions may be applied, because it merely provides guidelines as to the types of measures that may be implemented, while decision-making authority resides centrally within the Council.[224]

> However, it needs to be remembered that countries are not the only actors being able to use economic sanctions against a certain country. For instance, Brazilians were worrying in 2019 (see subchapter 4.4) that environmentally conscious buyers could start avoiding the country's produce because of the fires in the area of the Amazon.[225] This means that the Brazilian economy could suffer severely a lot after national and foreign buyers would not buy the Brazilian products anymore because of boycotting them due to environmental reasons.

In addition, it needs to be taken into consideration that the principle of non-interference can also affect the use of economic sanctions as a form of intervention. For instance, the Friendly Relations Declaration specifies that no State may use or encourage the use of economic, political or any other types of measures to coerce another State in

[222] https://yle.fi/uutiset/3-10934903, 28.2.2020.
[223] Ilieva, Dashtevski & Kokotovic 2018, p. 201 – 202.
[224] Ilieva, Dashtevski & Kokotovic 2018, p. 203.
[225] https://www.ft.com/content/7906e2d2-c5ba-11e9-a8e9-296ca66511c9, 29.2.2020.

order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.[226]

As a conclusion, there are many different possibilities to make an economic intervention by using economic coercion, such as embargoes, boycotts, travel, transport of financial restrictions on the flow of currencies. Imposition of sanctions is a very costly and difficult process where effectiveness or worthwhileness is often uncertain and questionable. It may be possible that sanctions could be effective in terms of breaking commercial relations, imposing economic costs, and fulfilling a punitive role, yet ultimately not be successful in achieving their stated political objective.[227] Thus, it is difficult to say that in which situations sanctions would be a suitable way to intervene in a situation and in which situations it would be better to find other ways to stop an environmental catastrophe or other disaster that needs to be intervened.

5.3.2.2 Can an economic intervention be made in a positive way without sanctions?

It needs to be remembered that all forms of an economic intervention do need to be negative sanctions. Sometimes there is a reason to economically intervene into a situation by using money to make a situation better.

For instance, in Brazil the main reason for farmers to burn the rainforests in the areas of the Amazon is that they need more land to farm. It is reasonable to say that the best and the most long-standing way to intervene into a situation like this economically is to give the farmers another option to earn their living, so they would not have to continue on the tradition of *queimada* also in the future or that they would at least take care of the reforestation of those areas that are not used as farm lands anymore. Norwegian and German governments set up an Amazon Fund in 2010. The Fund had $1 billion in cash in order to be used in reforestation of the Amazon, but, unfortunately, this economic intervention was not successful and none of it ever made its way to the large and medium-sized farmers.[228]

[226] Happold & Eden (ed.) 2016, p. 20.
[227] Ilieva, Dashtevski & Kokotovic 2018, p. 202.
[228] https://www.forbes.com/sites/michaelshellenberger/2019/08/26/why-everything-they-say-about-the-amazon-including-that-its-the-lungs-of-the-world-is-wrong/#7c7391e15bde, 1.3.2020.

Such a procedure would help the "intervened" area to develop without sanctioning it or without doing anything else that would harm the area in a way or another, so there is a reason to say that there is a need to concentrate on interventions like that also in the areas of international law in future.

5.4 What kinds of possibilities do other countries and international community have to intervene in the tradition of *queimada*?

5.4.1 Legal possibilities to stop the burning season of *queimada*

In Chapter 5, it has been discussed what kinds of legal possibilities other countries and the international community have to intervene in a situation in which one country is destroying the environment. In this subchapter, I will further discuss if these possibilities are suitable in the case of the burning Amazon.

Before discussing the actual question, it needs to be said that a possible ecological intervention to stop the deforestation of the Amazon has been "a hot potato" of international environmental decision-making for a long time. For instance, in 1992, the Third World timber-producing countries at the Rio Summit resisted the formulation of a binding treaty. They considered it a threat to their sovereignty when they saw unabashed proposals from developed countries as global intervention by UN "green helmets" in pursuit of an alleged *droit d'ingérence écologique*, or more subtle calls for the international community to assume its joint responsibility for areas whose ecological significance far surpasses that of the countries in which they are situated geographically. Such areas included the Amazon, the Himalayas, Antarctica, certain seas, and areas constituting part of the "common heritage of mankind".[229]

Almost three decades later, it seems that people have not gotten any wiser. In August of 2019, the President of Brazil *Jair Bolsonaro* announced that his government lacked the resources to fight the thousands of fires in the Amazon area.[230] Despite the fact that even the President of Brazil had announced just days earlier, Brazil's government angrily rejected the offer to help from G7. Leaders of some of the world's wealthiest

[229] Baslar 1998, p. 155 – 156.
[230] https://www.bbc.com/news/world-latin-america-49433437, 4.1.2020.

countries had pledged more than $22 million to help combat fires in the Amazon rainforest. However, Brazil's government did not accept that. The Brazilian opinion about other countries helping Brazil changed soon after that, while Brazil's government accepted $12 million in aid from Britain.[231]

The year 2019 was surely not the first time when Brazil has asked for help from abroad for reforestation of the Amazon. An intervention in the area of the Amazon took place already a decade earlier. In 2009, a notable innovative restoration intervention happened in Brazil and involved institution building across the landscape: 160 NGOs, private companies, research institutes and government agencies entered into the Atlantic Forest Restoration Pact to protect 15 million degraded hectares by 2050, representing 30 percent of the original rainforest while still protecting existing forest reserves across 15 Brazilian states. The Pact was an attempt to crease additional incentives for individual actors to participate in forest restoration efforts because they could then be part of the larger decision-making bodies.[232] Such an intervention would be useful also nowadays, but it would require that Brazilians do not burn the Amazon rainforest to the same extent anymore – if they continue doing it, it would mean that also those trees that are planted in the Amazon might burn and so there would be no sense in doing the intervention.

From a legal point of view, the most interesting part in 2019 was that Brazilian President told that he would reconsider accepting the help package only if French President, *Emmanuel Macron*, would withdrew "personal insults and insinuations that Brazil does not have sovereignty over the Amazon". Besides Bolsonaro, also *Otávio Rêgo Barros*, the government spokesman from Brazil, described the Bolsonaro administration's approach to accepting or rejecting foreign help and told that Brazil's sovereignty is non-negotiable.[233]

The acceptance of such a package would mean accepting an intervention that is both economic and ecological at the same time. However, it is obvious that these comments show that the Brazilian authorities are not favouring foreign help or the protection of the Amazon ecosystem. Luckily, as told above, the Bolsonaro government ended up

[231] https://www.nytimes.com/2019/08/27/world/americas/brazil-amazon-aid.html, 4.1.2020.
[232] Telesetsky, Cliquet & Akhtar-Khavari 2017. Page which includes footnote number 94.
[233] https://www.nytimes.com/2019/08/27/world/americas/brazil-amazon-aid.html, 4.1.2020.

asking for foreign help finally in December 2019.[234] This is a good sign, because it seems that international pressure has made the Brazilian authorities change their traditions and start thinking of the Amazon environment. The time of the *queimada* season of 2020 has not started yet during the time of writing this thesis, so there is no proper evidence to show that Bolsonaro and the Brazilian authorities are actually going to change the traditions and avoid encouraging the Brazilian farmers to burn rainforests in future.

If Brazil's sovereignty is non-negotiable indeed, it is legally interesting to discuss how Brazilians could accept help from Britain or any other foreign country without losing part of the country's sovereignty. International practice recognizes the phenomenon, which is known as intervention by invitation. This basically means that states can consent to the military presence of other states on their territory.[235] Obviously, this did not happen when Great Britain gave Brazil some monetary help or when Brazil asked for developed countries to economically intervene in the situation and pay for the reforestation of the area of the Amazon rainforests and promote sustainable economic activities during a climate-change conference in December 2019.[236] The latter one can be considered an economic intervention by invitation, because Brazilians asked for monetary help from richer countries in order to stop the environmental degradation and, especially, the severe deforestation in the area of the Amazon rainforests. Additionally, it shows well how economic interventions do not need to include influencing the intervened country's economy in a negative way.

As a result, the legal nature of the situation is more difficult to define. Intervention by invitation does not solely concern a political or economic intervention, but a military intervention. However, several UN General Assembly resolutions have incorporated the principle by stipulating that "no State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. In this case, an intervention can take different forms, like a political intervention, an economic intervention, or a military intervention.[237]

[234] https://www.wsj.com/articles/brazil-to-ask-rich-countries-to-help-pay-for-amazon-protection-11574278849, 28.2.2020.
[235] Visser 2019, p. 21.
[236] https://www.wsj.com/articles/brazil-to-ask-rich-countries-to-help-pay-for-amazon-protection-11574278849, 28.2.2020.
[237] Visser 2019, 24 – 25.

Besides intervention by invitation, interventions can be done without the intervened country's consent. These are mainly military interventions, and they can be made in the name of environment. The so-called ecological intervention can be made by a foreign army in a case another country is destroying environment and is not going to stop it on its own. These interventions are made aiming to protect the majority rather than minority.

Already in 1998, it was stated that, according to the concept of intergenerational equity, by depleting natural resources and degrading the Amazon, Brazil could be said to deny and interfere with the rights of future generations to share in the natural resources future generations are supposed to inherit. In today's world, Brazilians need to realize that they are not just conserving their forest by ending the tradition of the burning season, but are determining the future of humankind. The destruction of the Amazon threatened, both in 1998 and today, not only the aboriginal communities living in the area of the Amazon, but also every single creature on Earth, as a result of global ecological interdependence.[238]

5.4.2 Mercosur

At the end of June 2019, the European Union and four founding members of the Southern Common Market called Mercosur (Argentina, Brazil, Paraguay and Uruguay) reached an 'agreement in principle' on a free trade agreement (FTA) as part of a wider association agreement.[239] The President of Brazil, described on Twitter that the agreement is historical and will give huge advantages to Brazil. Due to the agreement, Brazilians will not need to pay duties when they will export orange juice, coffee, fruits or other agricultural products to Europe. One of the most important products is meat – the agreement makes it more possible to import cheap meat into Europe from Southern America. This requires that every EU country and the European Parliament will accept the agreement.[240] This agreement is a good example of how economic sanctions that were discussed earlier in this thesis can be used to deal with environmental questions.

[238] Baslar 1998, p. 153.
[239] EPRS 2019, p. 1.
[240] https://yle.fi/uutiset/3-10854512, 1.1.2020.

Accepting the agreement is not an easy task, because, for environmental reasons, there were significant problems in creating it. The French President *Emmanuel Macron*, for instance, announced that France was no longer supporting the agreement because the Brazilian president had violated his promise to respect the Paris Agreement. It was written at least in December 2019 that it was still unclear what conditions France would require to renew its support for the agreement.[241]

The situation of rainforests in Brazil seems to prevent the trade deal from happening. MPs in Austria have demanded a government veto on the deal. France and Ireland had already earlier warned they will reject the deal if Brazil does not do more to curb fires in the Amazon rainforest. Austrians are also saying the deal must do more to tackle environment issues.

Meanwhile, for instance, Austria's federation of industry has backed the Mercosur deal and insisted that the deal includes a commitment to the Paris Climate Agreement and the fight against deforestation in the Amazon area.[242] This is true: while delivering significant economic benefits, the agreement is also promoting high standards. The European Union and Mercosur commit to effectively implement the Paris Climate Agreement. The agreement has a dedicated sustainable development chapter that will cover issues such as sustainable management and conservation of forests, respect for labour rights and promotion of responsible business conduct. The agreement upholds the highest standards of food safety and consumer protection, as well as the precautionary principle for food safety and environmental rules and contains specific commitments on labour rights and environmental protection, including the implementation of the Paris climate agreement and related enforcement rules.[243]

The environmental impacts of trade liberalisation have become more relevant given the increase in the traffic of goods and its harmful effects on the ecosystem. Nevertheless, the issue of climate change and the Mercosur deal only became a subject of public debate in the wake of the hundreds of fires propagated in the Amazon rainforest in August 2019. As told above, this situation generated a political tension between France

[241] Ghiotto & Echaide 2019, p. 6.
[242] https://yle.fi/uutiset/3-10854512, 1.1.2020.
[243] European Commission 28.6.2019.

and Brazil, with numerous declarations being exchanged between the Presidents of France and Brazil.[244]

However, even if the Mercosur agreement plays an important role in international trade policy, it cannot strongly affect Brazilian environmental law. As the Finnish organization *Finnwatch* wrote in 2019, both the European Union and Brazil are taking care of their own environmental legislation and policy and, for this reason, the EU does not have that much possibility to affect the Brazilian environmental policy and stop destroying the rainforests. In the agreement, everything is written in a basic level and many international agreements like the Paris Climate Agreement are mentioned.[245] This means that Mercosur is a good way to make an economic intervention, but it cannot be used on its own in order to create longstanding legal solutions to restore the environment of the Amazon rainforests.

[244] Ghiotto & Enchaide 2019, p. 65.
[245] https://www.finnwatch.org/fi/blogi/648-miten-eu-n-ja-brasilian-vaelinen-kauppasopimus-vaikuttaa-sademetsaetuhoihin, 28.2.2020.

6. Conclusions – does the Amazon affect human rights at national and international level and can other countries protect the Amazon rainforest if Brazil keeps on burning it?

In this thesis, my intention has been to discuss whether foreign states have a right to intervene in a situation in which a particular state is destroying environment by committing serious environmental crimes or other serious environmental degradation. As the main example, I have used *queimada*, a traditional burning season in Brazil. During the burning season, Brazilian farmers are burning rainforests in the Amazon in order to obtain more land to farm. This topic became extremely current in 2019, when the far-right Brazilian President, *Jair Bolsonaro*, encouraged Brazilian farmers to burn even more land in the Amazon than during earlier burning seasons. Meanwhile, the French President, *Emmanuel Macron*, has named the Amazon rainforests "our Amazon" and argued that Brazilians have a duty to protect the rainforest. Macron's opinion is interesting in eyes of international law – as has been seen in this thesis, the status of the Amazon rainforests is difficult to analyze in international law. Natural resources are belonging to under national legislation, but burning the "lungs of the world" is severely harming the rights of other people in both neighbouring states and also in all other parts of the world, because "the lungs" are so important for the global ecosystem. For this reason, it can be questioned whether there would be a reason to say that burning the Amazon is violating the human rights of the whole of humankind.

The year 2019 in the Amazon is a good example about environmental destruction. In today's world, environmental destruction has become a global problem, while many environmental disasters affect multiple countries. Further, issues like global warming and the thinning ozone layer do not affect just one country, but the entire world. However, international law has not addressed the issue, leaving this matter to individual countries.[246] This has happened also in the case of the Amazon rainforest – despite the fact that the rainforest is significant for the entire globe, states existing in the area of it are responsible for its natural resources, because the administration of natural resources belongs under national law. In the long run, this cannot continue and so, there is a reason to start calling the Amazon rainforests one of the global commons. Despite the fact that protecting the Amazon rainforests can already be counted as *erga*

[246] Greene 2019, p. 1.

omnes, this would help other countries to intervene the situation even better and help them to use the principle of *actio popularis* and make the possible environmental crimes that are committed in the area of rainforests properly researched by international courts.

The reason for quite weak global administration on environmental resources is obvious: the concept of global environmental protection is just taking its first steps, because the importance of environmental protection has been understood only during a few decades. This means that concepts of international environmental protection, such as the human right to a healthy environment and the responsibility to protect it or defining ecocide as an international matter and ecological intervention as a way to intervene into a situation in which one country is committing or about to commit ecocide or otherwise destroying environment, have not had a chance to properly develop yet.

There are still many uncertainties about, for instance, the meaning of a healthy environment as a legal term and in what circumstances it is legally possible to make an ecological intervention, because most of the legislation considering international interventions are still about military interventions that are made in times of war. All these themes are linked to each other, because both the human rights aspects and the environmental law aspects need to be taken into consideration when discussing whether there is a possibility to intervene in a situation in which one country is destroying its natural resources and other environment. This is important in a case in which it needs to be decided whether an ecological intervention is needed, because where environmental resources have critical thresholds beyond which they cannot be substituted for by other types of capital, interventions to prevent these thresholds from being exceeded need to be considered also in the case of the burning Amazon rainforest.[247]

Because there are some grave uncertainties in international environmental law considering the above-mentioned topics, answering the question in the title of this chapter is not a simple task. The responsibility to protect is mainly considering human rights. Even if right to a healthy environment is not officially recognized as a human right, over a hundred states have already counted it as a fundamental right in their constitutions. However, this does not make them responsible to protect people's right to a healthy environment from an international perspective. Making them responsible to

[247] Everett etc. 2010, p. 8.

protect the environment would require making environment an officially recognized human right or making states legally responsible to protect the environment just because of environmental protection.

Despite the possible uncertainties, it can be said that other states and international community already have many possibilities to intervene into a situation in which Brazil or another country destroys the environment. The most far-reaching form of an intervention is making an intervention by invitation, because then the intervened country is voluntarily inviting another country or countries to help and then there is less possibilities that the country would reject help. Both interventions that are made after invitation and those that are made without it can be made either as military, economic or ecological intervention or as a combination of them – a country can be targeted by economic sanctions because of destroying environment. The Mercosur agreement is a good example of this, because there are still many problems to get the agreement ratified in Europe.

Additionally, even if ecocide is not yet recognized as a legal term, destroying environment can already be prosecuted as a crime against humanity: degrading the environment and especially degrading the Amazon, or other areas that are extremely necessary for the global ecosystem and for the whole humankind, creates a huge threat for both current and future generations. Being able to prosecute ecocides would mean that the international community would make it more possible to stop countries from destroying environment by being able to properly prosecute them. Even if this is not an actual form of intervention, it can be considered as a somewhat preventive intervening by making countries' authorities understand that destroying the environment is against international law and international criminal law without any doubts about whether a particular act is a crime against humanity or not.

As a conclusion, there are already now multiple possibilities to intervene in a situation in which a particular country is destroying environment, even if ecocide is not defined as an international crime yet or the right to a healthy environment as an internationally binding human right. This also means that, whether Brazilians are continuing on the tradition of *queimada* in future, other countries and the international community have a possibility to intervene into the situation. As long as status of an environment stays vague in international law, it is reasonable to say that they are only having a right to

intervene into a situation and break against the state sovereignty of Brazil by doing that. They will not have a proper legal duty to do that as long as environment is not an official international human right, environment is not given its own rights or ecocide is not recognized as an international crime.

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